Supreme Court of the United States

OCTOBER TERM, 1961

No. 794

UNITED STATES, APPELLANT

vs.

GEORGIA PUBLIC SERVICE COMMISSION

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA

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[fol. 1] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION

Civil Action No. 7528

UNITED STATES OF AMERICA, PLAINTIFF

vs.

THE GEORGIA PUBLIC SERVICE COMMISSION, DEFENDANT

COMPLAINT OF THE UNITED STATES OF AMERICA—filed March 9, 1961

Comes now the United States of America and for cause of action avers the following:

I.

This action is brought pursuant to the jurisdiction conferred upon this Court by Title 28, Sections 1345 and 1331, 2201, 2281 and 2284 of the United States Code for the purpose of having this Court declare that the provisions of Title 93, §§ 309, 310, 403 and 407, and Title 68, §§ 613 and 614 of the Georgia Statutes are unconstitutional and void as applied to shipments of property made by the United States between points in Georgia and for the further purpose of having The Georgia Public Service Commission permanently enjoined from regulating the rates for such shipments.

II.

The United States, in the discharge of its sovereign powers and responsibilities conferred upon it by the Constitution of the United States, has established throughout the United States and foreign countries a number of installations, both civil and military. Many of these installations were established primarily for the purpose

of providing for the common defense in the light of the worldwide commitments of the United States in recent years, and are interrelated and integrated into a general [fol. 2] nationwide and worldwide depot system designed to care for the logistical needs of the United States in the light of its broad strategic plans. There are approximately 25 *military* installations alone in the State of Georgia. There are also a number of civil establishments within the State including a large general supply depot maintained by the General Service Administration in Atlanta. In order to maintain these establishments and to carry out the purposes for which they were created, it is necessary to move large amounts of supplies and materiel into the State from other States. It is likewise necessary in many instances to transfer such supplies and materiel from one installation to another within the State.

In the year 1960 Georgia intrastate traffic in dry military cargo alone involved approximately 8,000 shipments weighing 60 million pounds. The cost of moving this Government-owned military property amounted to approximately $300,000. In addition to this dry cargo the cost of moving bulk petroleum between installations in the State for military purposes amounted to approximately $400,000 a year. The cost of moving supplies and material which are not strictly military was substantial. In addition to this property of the United States which moves between points in the State of Georgia, the United States contracts and pays for the transportation of household goods and personal effects of the Armed Services and other Government personnel between locations within the State. During 1960 there were approximately 11,000 shipments of household goods and personal effects of the personnel of the Armed Services alone, weighing approximately 4 million pounds, the transportation of which cost the United States approximately $175,000.

III.

Since the creation of the Federal Government and the establishment of the Armed Services, it has been the practice in the moving of supplies and property for the

United States by common carrier for duly authorized officers of the United States to negotiate rates for such shipments. This practice was found necessary due to the [fol. 3] unique character of the shipments by the Government and further due to the fact that the commodities involved are in many instances not of the type in the flow of commercial traffic. Thus, when the Interstate Commerce Act was enacted in 1887 providing for the publication of uniform tariffs by common carriers in interstate commerce for the general purpose of eliminating discriminations and undue prejudice to persons and localities, Section 22 of the Act expressly recognized the long-established practice and exempted shipments for the United States. It has been generally assumed that the powers and duties of the officers of the United States to make special arrangements for the transportation of such property applied alike to interstate and intrastate shipments, and since the earliest times such contracts have been indiscriminately made on the assumption that state regulatory statutes requiring the publication of tariffs or empowering the State Commission to prescribe rates between points intrastate, had no application to shipments for the United States. Thus the present Act of Congress from which the officers of the United States derive their power to negotiate rates for transporting such property for the United States makes no distinction with respect to interstate or intrastate shipments; *Federal Property and Administrative Services Act of 1949*, Public Law 152, 81st Congress, 1st Session, Sections 201 and 202, 63 Stat., at page 377, and the regulations of the various departments and agencies of the Government containing the instructions with respect to the negotiation of rates by the various officials of the United States make no distinction between shipments made intrastate and interstate.

IV.

Upon information and belief, for many years the Georgia Public Service Commission did not regulate the rates for shipments by the United States between points within the State. In recent years, over the protests of the officials of the United States, the Commission has asserted

[fol. 4] jurisdiction over such rates. Thus on July 27, 1960 the General Services Administration of the United States issued invitations for bids for the movement of household goods and personal effects of personnel of a communicable disease center being transferred from Savannah, Georgia to Atlanta, Georgia. In response to this invitation 13 duly certified carriers in Georgia submitted bids for the movement. The bids of 8 of these carriers were in accordance with the rates and charges prescribed by The Georgia Public Service Commission. Four of the carriers submitted bids at rates which did not conform to the schedules approved by the Commission, but were generally lower. In accordance with the rules and regulations governing the procurement of such services, the General Services Administration awarded the contract to the Consolidated Van and Storage Co., Inc. of Atlanta as the lowest responsible bidder. Consolidated Van and Storage Co., Inc. was one of the companies whose bids were at rates lower than those approved by the Commission. Whereupon the Commission advised Consolidated Van and Storage Co., Inc. that if it entered into the carriage upon the rates determined by the contract entered into with the General Services Administration, proceedings would be brought against it for the purpose of revoking its certificate. As a result of this threat on the part of the Commission, Consolidated Van and Storage Company, Inc. refused to perform the contract, and it was necessary for the General Services Administration, in order to carry out the movements on schedule, to engage another carrier at rates prescribed by the Commission. Notwithstanding the fact that Consolidated Van and Storage Co., Inc. had refused to go forward with the contract under the threat of the Commission, the Commission issued a rule nisi, dated September 26, 1960, directing the company to show cause why its certificate should not be revoked for failure to comply with the rates prescribed by the Commission in submitting its bid to the General Services Administration as [fol. 5] hereinbefore set forth. A hearing was held on the return of the rule nisi before the Commission in Atlanta on October 25, 1960. An attorney for the Gen-

eral Services Administration, as a representative of the United States, appeared at the hearing and petitioned the Commission on behalf of the United States to be allowed to intervene in the proceeding and present evidence and assert the position of the United States that the Commission did not have jurisdiction to regulate the rates for shipments by the United States between points in Georgia. The Commission refused to allow the United States to intervene in the proceeding.

V.

As a result of the actions of The Georgia Public Service Commission as set forth above the carriers in the State of Georgia will not submit competitive bids for the carriage of property for the United States or enter into any contract with the United States for the carriage of property except at rates prescribed by the Commission, and the Commission continues to regulate such rates from day to day.

VI.

The United States avers that insofar as the various sections of the Georgia Statutes cited above empower The Georgia Public Service Commission to prescribe the rates for shipments of property for the United States between points in Georgia, they are unconstitutional and void under Article VI, Section 2 of the Constitution of the United States in that:

1. For no valid reason within the police powers or other reserved powers of the State of Georgia, they place an unreasonable burden and impediment on the United States in the discharge of its constitutional powers and responsibilities under Article I, Section 8, Clauses 7, 12, 13, 16 and 17, and Article IV, Section 3 Clause 2, of the Constitution of the United States.

[fol. 6] 2. They place an unreasonable burden on interstate commerce in an area under the exclusive jurisdiction of the Congress of the United States pursuant to the provisions of Article I, Section 8, Clause 3, of the Constitution of the United States.

3. They contravene the policy of Congress implicit in the *Federal Property and Administrative Services Act of 1949*, Public Law 1952, 81st Congress, 1st Session, Sections 201 and 202, 63 Stat., at page 377, relating to the negotiation for the transporting of property for the United States and the regulations of the various departments and agencies of the United States issued pursuant thereto.

VII.

The United States avers that this controversy is real and of vital importance from its point of view within the intent of Title 28, Section 2201 of the United States Code, conferring upon this Court jurisdiction to determine and declare the rights, duties and responsibilities of all concerned; and in the event the Commission continues to regulate the rates for the shipments made by the United States, the United States will be subjected to unlawful regulation and will suffer irreparable injury therefrom and it has no adequate remedy at law.

WHEREFORE, the United States respectfully prays:

(a) That in accordance with Section 2284(1) of Title 28, United States Code, a three-judge court be convened to hear and determine this action.

(b) That in accordance with the procedure set forth in Title 28, Sections 2281 and 2284(3) of the United States Code, this Court grant an interlocutory injunction and all appropriate process necessary to prevent and prohibit The Georgia Public Service Commission from attempting to regulate the rates for the shipment of prop-
[fol. 7] erty for the United States between points in Georgia until this cause is finally heard and determined on the merits.

(c) Upon final hearing of this action that judgment be entered declaring that insofar as Title 93, Sections 309, 310, 403, 407; Title 68, Sections 613, 614 and related Sections of the Georgia Statutes prohibit carriers within the State from entering into contracts with the United States for shipment of property, including not only property owned by the United States but also the household effects of the personnel of the United States at rates other than those approved by The Georgia Public Service

Commission, they are unconstitutional and void; and that The Georgia Public Service Commission be permanently enjoined from taking any action or issuing any orders which would interfere with the United States and the various carriers in the State of Georgia from entering into special arrangements with respect to rates for the transportation of property for the United States; and for such other relief as the Court may deem just and proper.

s W. Wallace Kirkpatrick
Acting Assistant Attorney General

s Charles D. Read, Jr.
United States Attorney

s Raddia J. Rashid

s E. Riggs McConnell
Attorneys,
Department of Justice
Washington 25, D. C.

[fol. 8] ATTACHMENT TO COMPLAINT

AFFIDAVIT OF JAMES W. HIGGINS

With the United States Army)
At Arlington, Virginia) SS

James W. Higgins, Colonel, Department of the Army, Military Traffic Management Agency, deposes and states:

That he is and has been Director of Traffic of the Military Traffic Management Agency, Washington 25, D. C.

That his duties as Director of Traffic for the Military Traffic Management Agency are to supervise the elements of that Agency which are engaged in rate negotiation and analysis, routing and utilization of carriers, and the development of improved methods for the handling of

Department of Defense traffic. He has been an officer in the Transportation Corps, U. S. Army, since 1942, and among his assignments have been the following: Operations Officer, 2d Transportation Zone, New York; Chief, Freight Traffic Branch, Office Chief of Transportation; Transportation Officer, U. S. Army, Alaska; Port Transportation Officer, New York Port of Embarkation; Transportation Officer, 1st U. S. Army. That prior to entering military service, he had for fifteen years served in various capacities in the traffic department of a Class I railroad.

That the Military Traffic Management Agency carries out the responsibilities of the Secretary of the Army as the Single Manager for Traffic Management for the Department of Defense, and is responsible for directing all traffic management functions of all military departments within the Continental United States in connection with the procurement, use, cost and control of transportation services for the movement of military traffic by commercial transpotration.

[fol. 9] For many years the United States Government has negotiated special agreements with carriers as to the rates governing the transportation of Government property, intrastate and interstate, both Government-owned property and that for which the Government pays and bears the transportation cost, such as for the transportation of household goods and personal effects of Government personnel, including that moving within Georgia. Some of these agreements are nation-wide, or practically so, in scope, such as rail Joint Military Passenger Agreement No. 29; Traffic Executive Association, Eastern Railroads Quotation No. A1706-B, and Household Goods Carriers' Bureau Military Rate Tariff, I.C.C. No. 1A, on Household Goods between points within U. S. (other than Alaska and Hawaii), with the participating carriers having the right of taking independent action for establishing other and different rates.

That the U. S. Army and other military services have for years made shipments of Government traffic both of military hardware and of household goods of military personnel and their dependents, as well as other traffic necessary for the continued operation of the military

establishment, pursuant to rates and agreements negotiated with various kinds of carriers operating within that state, within other states, and throughout the United States. There are approximately twenty-five military installations in the state of Georgia, to, from, and between which such traffic necessary for the operation of the military establishment, is transported. Into and out of these military installations situated within the state of Georgia flow large amounts of supplies and materials. It is estimated that the current annual Georgia intrastate traffic of military supplies and materiel, alone, to and from the various installations in that state involve approximately 8,000 shipments weighing 60,000,000 pounds. The cost of moving this Government-owned property amounts [fol. 10] to approximately $300,000.00. These figures are exclusive of bulk petroleum, the cost of which is approximately $400,000.00 annually. At the present time there are also about 1,100 Georgia intrastate van carrier shipments a year of household goods of the Armed Services weighing approximately 4,000,000 pounds, which costs the United States approximately $175,000.00.

In the event the Georgia statutes and regulations affecting transportation rates and charges are construed as being applicable to traffic for the Federal Government, and if they are permitted to continue in effect as to such traffic, the time-honored right of the sovereign to negotiate rates on its traffic would be completely disrupted, with attendant confusion, possible delays, and apparent unnecessary increase in the expense to the Federal Government. It would materially hamper the Department of Defense in carrying out its responsibilities in national defense.

If the provisions of the Georgia statutes are interpreted as being applicable to Government traffic, and are permitted to remain in effect, they most certainly will disrupt the existing rate structure applicable on Government traffic, which was secured in part through negotiation, and would require the movement of all such traffic under tariff rates and provisions, many of which are unsuited for the unique requirements of military traffic. It is the policy of the Department of Defense to seek rate adjust-

ments for the movement of military traffic only when existing tariff rates are considered inequitable under the circumstances for the traffic involved. A large part of military traffic does move at tariff rates. Much of the traffic for the military services, however, moves to and from installations which are necessarily located outside the immediate boundaries of commercial zones and large industrial centers for which favorable rates have been established. In many instances, therefore, equitable tariff [fol. 11] are not applicable for the movement of Government traffic. Hence, obviously the cost of transporting property for the Government would be substantially increased, and military procurement procedures applicable within the United States would be compelled to conform to Georgia regulation. If this be permitted, it is conceivable that the defense establishment would likewise be required to comply with the regulation of the other 49 states and the District of Columbia. It follows also that were state-fixed rates to be considered unreasonable, military traffic would be subjected to such unreasonable rates until such time as required rate procedures were completed and an appropriate rate order entered. The time factor and flexibility in adjusting rates and related arrangements for military traffic is of the utmost importance to the affiant in his concern for efficient military traffic management because of the fact that tactical and strategic plans fluctuate rapidly and the supply system must be responsive to military operations. State regulation of rates on military traffic would, in his opinion, hamper the Military Traffic Management Agency in the timely performance of its traffic management mission.

That rate negotiations conducted by the Military Traffic Management Agency under affiant's directions meet the generally established criteria for reasonableness; and carriers who have indicated a willingness to negotiate reasonable rates on military traffic would be prevented from so doing should the Georgia statutes be found to be applicable to military traffic.

Accordingly, in order to prevent immediate and irreparable injury to the United States, it is submitted that an interlocutory injunction should be issued which would

prevent and prohibit the Georgia Public Service Com [fol. 12] mission from taking any action to enforce the said Georgia statutes insofar as they purport to be applicable to shipments of property by or for the United States, until such time as this cause is finally heard and determined on the merits.

Further affiant sayeth not.

/s/ James W. Higgins
JAMES W. HIGGINS
Colonel, USA

STATE OF VIRGINIA)
COUNTY OF ARLINGTON) ss:

Sworn and subscribed to before me this 30th day of January 1961.

/s/ Netha L. Healy
Notary Public, Arlington County
My Commission Expires May 28, 1962

(SEAL)

[fol. 13] ATTACHMENT TO COMPLAINT

AFFIDAVIT OF GEORGE D. KRUEGER

State of Georgia)
County of Fulton) ss

George D. Krueger, first being duly sworn, on his oath deposes and says that he is employed by the General Services Administration, as its Regional Director, Transportation and Public Utilities Service, Region IV, Atlanta, Georgia, and has been duly assigned or delegated certain duties in connection with procurement of transportation services for the mass movements of household goods and personal effects of government employees.

Pursuant to provisions of Title II—Property Management, Section 201 of the Federal Property and Administrative Services Act of 1949, (63 Stat. 383, 40 U.S.C. 481) Bureau of the Budget Circular No. A-37 of December 30, 1957 as amended by Transmittal Memorandum No. 4 dated February 20, 1960 and General Services Administration Order No. TPS 7460.1 dated March 15, 1960, the affiant was requested by the U. S. Department of Public Health, Communicable Disease Center of Atlanta, Georgia on July 15, 1960 to negotiate with carriers for the establishment of economical rates and charges to cover a mass movement of household goods and personal effects of Communicable Disease Center employees on transfer from Savannah to Atlanta, Georgia and vicinity in accordance with the above cited directives.

On July 27, 1960 affiant did issue and mail Standard Form 33, Invitation, Bid and Award No. 4-TPS-GS-61-1 to fifty-four (54) qualified carriers which invitation called [fol. 14] for a quoted rate per one hundred (100) pounds. In response to the invitation thirteen (13) carriers submitted sealed bids prior to the specified opening date. The thirteen carriers are listed on attached copy of Abstract of Bids, GSA Form 289. Eight carriers listed on lines 2 through 9 on the abstract quoted rates and charges as published in Georgia Public Service Commission Tariff No. 1-B, MF No. 3, effective July 1, 1959 and

supplements thereto. The other five carriers listed on lines 1, 10, 11, 12 and 13 submitted bids based on rates per one hundred (100) pounds which were lower than those published in the Commission's tariff.

Upon evaluating all thirteen bids received, affiant determined that bidder No. 12, Consolidated Van & Storage Companies, Inc., was the lowest responsive bidder and the award was made to Consolidated Van & Storage Companies, Inc. Whereupon, upon information and belief, several of the eight carriers who submitted bids at published tariff rates thereafter registered verbal complaints with the Georgia Public Service Commission respecting some carriers quoting prices lower than the Commission's maximum tariff rates. Upon information and belief, on August 12, 1960 the Commission telephoned the Consolidated Van & Storage Companies, Inc. and the four other carriers who bid lower than the rates published in the Georgia Tariff, and advised them that should they perform at the rates quoted GSA, they would be in violation of the Commission's rules and threatened them with revocation of their intrastate operating certificate.

The President of the Consolidated Van & Storage Companies, Inc. advised affiant that, as a result of the Georgia Commission's threat against the carriers, they would be unable to perform the services under the contract as awarded by this office August 5, 1960. A copy of Consolidated's letter dated August 23, 1960 is attached.

On August 24, 1960 this office acknowledged receipt of Consolidated's letter as per copy attached.

[fol. 15] Due to its inability successfully to negotiate a new contract with other carriers to perform the required services at lower tariff rates, the General Services Administration was forced to acquire the services of a carrier at rates prescribed by the Georgia Public Service Commission, which rates were higher than specified in the contract with Consolidated, based on individual moves.

Notwithstanding the fact that the contracting carrier refused to perform under its contract, the Georgia Public Service Commission issued a *Rule Nisi* dated 26 September, 1960, a copy of which is attached.

Affiant attended the hearing on the *Rule Nisi* proceeding, held at the offices of the Georgia Public Service Commission in Atlanta on October 25, 1960. General Services Administration was refused permission to intervene as a party in the proceeding, and affiant, as a representative of GSA, was refused permission to testify regarding the facts of this situation.

[fol. 16] Mr. George D. Krueger, Regional Director, Transportation and Public Utilities Service, General Services Administration, Region IV, Atlanta, Georgia, being duly sworn, states that he has read and is familiar with the foregoing Affidavit and knows the contents thereof; that the same is true to his own knowledge, except as to the matters therein stated on information and belief, if any, and that as to those matters and things he believes them to be true.

GEORGE D. KRUEGER

Subscribed and sworn to before me this 30th day of January, 1961.

/s/ Montene W. Hudson
MONTENE W. HUDSON, Notary Public
Georgia, State at Large

My Commission Expires July 6, 1961

(SEAL)

[fol. 17]

ATTACHMENT TO COMPLAINT

PAGE 1 OF PAGES

NUMBER OF INVITATIONS ISSUED: 54
NUMBER OF BIDS RECEIVED: 13

GENERAL SERVICES ADMINISTRATION
FEDERAL SUPPLY SERVICE

ABSTRACT OF BIDS

INVITATION NUMBER: 4TPUS-6A-61-1
OPENING DATE: 8-9-60 OPENING TIME: 2:00

DESCRIPTION OF SUPPLIES OR SERVICES: Movement of household goods from Savannah, Georgia to Atlanta, Georgia for account of the PHS-Communicable Disease Center.

LINE NO.	BIDDER	ACCEPTANCE TIME (Days) *	DISCOUNT (%) FOR PAYMENT IN 20 DAYS OR MORE	LETTER OR NOTATION QUALIFYING BID (Check, if Yes) †	DELIVERY SPECIFIED IN IFB (Days) ‡	ITEM NO.	QTY	UNIT	FOB DEL. POINT §								
						△		CWT									
1	Cherry Transfer & Storage Co., Atlanta, Ga.							$ 3.10	Plus Packing cost.								
2	Greyhound Storage, Inc., Atlanta, Ga.							4.40	4.40	3.50	3.50	3.50	3.10	Plus packing cost & Tariff			
								2000 #	2,500 #	4000 to 5000 #	6000 #	7000 #	8,000				
3	Givens, Savannah, Ga.							At Rates GPSC									
4	John J. Woodside Storage Co., Atlanta, Ga.							At Rates GPSC									
5	Arrow Van Lines, Savannah, Ga.							At Rates GPSC									
6	Youmans Van & Storage Co., Inc., Savannah, Ga							At Rates GPSC									
7	Washburn Storage Co., Atlanta, Ga.							At Rates GPSC									
8	Manfra Transfer & Storage Co., Atlanta, Ga.		2%-20 1%-30					At Rates GPSC	Packing @ $4.00 per cwt - Unpacking @ $1.00 per cwt						Based on Weight of Shipment		
9	Benton Bros. Drayage & Storage Co., Atlanta, Ga.							At Rates GPSC									
10	Suddath of Savannah, Inc., Savannah, Ga.		5%-20					4.25									
11	Atlanta Cartage Co., Atlanta, Ga.		2%-20					5.12									
12	Consolidated Van & Storage Companies, Atlanta Ga.							(3.98)	Includes packing.								
13	WEATHERS BROS STORAGE CO, ATLANTA GA							4.87									
14																	
15																	
16																	
17																	

I hereby certify that all bids received in response to this invitation were opened under my personal supervision, and that the names of all bidders have been entered hereon.

Lisa L Krueger (Signature)

TABULATED BY: Lisa L Krueger

DATE: Aug 9, 1960

* RECOMMENDATION AND APPROVAL OF AWARD(S) (Bidder(s) and Price(s) circled above)

BASIS FOR AWARD

X LOWEST RESPONSIVE BIDDER

TIE BID

ONLY BID

OTHER THAN LOWEST RESPONSIVE BIDDER (See explanation on reverse hereof or attached)

NUMBER OF AWARDS (Complete form): One

AWARD(S) RECOMMENDED BY (Initials and date): 5/15/60

AWARDS INDICATED ABOVE ARE AUTHORIZED

PURCHASING AGENT'S SIGNATURE AND DATE: Lisa L Krueger Reg Dir 4PUS

APPROVAL (Signature and title of approving officer, when appropriate)

FOOTNOTES

* Indicate by a check (√) a 60-day acceptance.
† When checked, enter 'CB', denoting 'See bid' immediately after related unit price.
‡ Indicate by check (√) if bid conforms to delivery specified, otherwise enter number of days offered in bid.
§ This line for optional use; indicate shipping point, lot price awarded, lot, etc.
△ This column for optional use; indicate number of employees (S = under 500 and O = 500 and over), surplus labor, disaster factor

SA FORM 289 (REV 1-58)

[fol. 18] ATTACHMENT TO COMPLAINT

GENERAL SERVICES ADMINISTRATION
(SEAL) Region 4

Atlanta 23, Georgia

August 24, 1960

In reply refer to: 4T

Mrs. Jo. T. Desmond,
President
Consolidated Van and Storage Co's.
231 Nelson Street, S.W.
Atlanta 3, Ga.

Invitation, Bid, and Award
No. 4-TPS-GS-61-1
Contract No. GS-04T-6
August 15, 1960

Dear Madam:

This letter acknowledges receipt of your letter dated August 23, 1960 wherein you advised this Administration that due to circumstances beyond your control, you would be unable to perform the services set forth in subject contract.

Therefore, this is to notify you that your right to proceed under subject Contract is hereby terminated. The services, provided for in your Contract, will be obtained from other sources and any additional costs to the Government will be charged to you.

Sincerely yours

GEO. D. KRUEGER
Regional Director, Transportation
and Public Utilities Service

[fol. 19] ATTACHMENT TO COMPLAINT

(SEAL)

GEORGIA PUBLIC SERVICE COMMISSION
244 Washington Street, S.W.
Atlanta 3, Georgia

File MCA 5626
Docket No. 1786-M

RULE NISI TO SHOW CAUSE

GEORGIA, FULTON COUNTY
GEORGIA PUBLIC SERVICE COMMISSION

vs.

CONSOLIDATED VAN & STORAGE COMPANIES, INC.,
231 Nelson Street, SW
Atlanta 3, Georgia

YOU ARE HEREBY REQUIRED to be and appear before the Georgia Public Service Commission, in its Hearing Room at 177 State Offices Building, 244 Washington St., S.W., Atlanta, Georgia, at ten o'clock A. M., on the 25th day of October, 1960, to show cause, if any you can, why the Commission should not cancel and revoke your Class "B" Certificate of Public Convenience and Necessity No. 1640 to operate as a motor carrier for the transportation of via the route and or routes described in said certificate, on account of your failure and refusal to comply with the Motor Carrier Acts of 1931, and the Rules and Regulations of the Commission, in the following particulars:

By submitting to the Regional Director, U. S. General Services Administration, Region IV, Atlanta, Georgia, an unauthorized tariff for the intrastate transpotration of household goods together with the rendering of services accessorial thereto between points within the State of Georgia, said tariff not having been filed with the Georgia Public Service Commission as required by Section 8 of the Motor Carrier Act of 1931, codified as Section 68-613, Georgia Code Annotated.

HEREIN FAIL NOT, UNDER PENALTY OF LAW, AS MADE AND PROVIDED.

BY ORDER OF THE GEORGIA PUBLIC SERVICE COMMISSION, this the 26th day of September, 1960.

/s/ Matt L. McWhorter
MATT L. McWHORTER, Chairman

/s/ A. O. Randall
A. O. RANDALL, Secretary

[fol. 20] ATTACHMENT TO COMPLAINT

CONSOLIDATED VAN & STORAGE CO'S.
Local and Long Distance Moving —
Storage — Packing — Shipping
Warehouse and Office: 231 Nelson Street, S.W.
Walnut 1412-3
Atlanta 3, Georgia

August 23, 1960

Mr. George Krueger
General Services Administration
Peachtree-Seventh Building
Atlanta, Georgia

Gentlemen:

Due to circumstances beyond our control we find that we are unable to perform the services under Invitation No. 4-TPS-GS-61-1, awarded to us, therefore it is necessary that we default on this contract. Thanking you for the consideration shown us, and hoping that we may be of service to you at some later date, we are

Cordially yours,

CONSOLIDATED VAN & STORAGE CO.,

By /s/ Jo. T. Desmond
President.

Filed March 9, 1961

[fol. 21]

ORDER DESIGNATING THREE JUDGE COURT—
March 28, 1961

The Honorable Frank A. Hooper, United States District Judge for the Northern District of Georgia, to whom an application for injunction and other relief has been presented in the above-styled and numbered cause, having notified me that the action is one required by act of Congress to be heard and determined by a district court of three judges, I, Elbert P. Tuttle, Chief Judge of the Fifth Circuit, hereby designate myself, Elbert P. Tuttle, Chief Judge of the United States Court of Appeals for the Fifth Circuit, and the Honorable Boyd Sloan, United States District Judge for the Northern District of Georgia, to serve with Judge Hooper as members of, and with him to constitute the said court to hear and determine the action.

WITNESS my hand this 27th day of March, 1961.

/s/ Elbert P. Tuttle
Chief Judge, United States Court
of Appeals for the Fifth Circuit

Filed March 28, 1961

[fol. 22] IN
UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

[Title omitted]

DEFENDANT'S MOTION FOR MORE DEFINITE STATEMENT—
filed April 28, 1961

Plaintiff's complaint is vague and ambiguous to the extent that the defendant cannot reasonably be required to submit his answer on applicable motions in response thereto and defendant therefore moves that plaintiff be ordered to furnish a more definite statement of his claim as set forth in his complaint as follows:

I.

That the plaintiff make clear whether he alleges that the Georgia Public Service Commission asserts jurisdiction to regulate and regulates the rates charged by carriers for the carriage in intrastate commerce within the State of Georgia of *all* property for the United States or whether he alleges that the Georgia Public Service Commission asserts jurisdiction to regulate and regulates the rates charged by carriers for the transportation in intrastate commerce within the State of Georgia of *only* a certain *class* or *classes* of property for the United States, and, if he means the second alternative, then which class or classes.

The complaint is ambiguous in that it might be construed to charge the Public Service Commission with asserting jurisdiction over either *all* shipments or *certain* shipments of property for the United States. Plaintiff's complaint alleges in Paragraph 4:

"Upon information and belief, for many years the Georgia Public Service Commission did not regulate [fol. 23] the rates for shipments by the United States between points within the State. In recent years, over the protests of the officials of the United States,

the Commission has asserted jurisdiction over such rates." . .

Then the plaintiff sets out a specific set of facts involving such an alleged assertion of jurisdiction by the Georgia Public Service Commission. That specific incident, as stated by the plaintiff, involved a shipment in intrastate commerce of household goods owned by individuals who were employees of the Federal Government. The effect of the allegation of this particular factual incident is to strengthen the duplicitousness of the complaint as a whole.

It is true that in paragraph 7(e) the plaintiff prays for a declaratory judgment declaring certain Georgia Code Sections violative of the Federal Constitution insofa as they "prohibit carriers within the State from entering into contracts with the United States for shipment of property, including not only property owned by the United States but also the household effects of the personnel of the United States at rates other than those approved by the Georgia Public Service Commission . . ." This does not clarify, however, the ambiguity found in the plaintiff's statement of the factual situation constituting the controversy as contained in Paragraph 4.

In short, the defendant contends that the allegation as to "[the jurisdiction asserted by the Georgia Public Service Commission in] paragraph 4 is so ambiguous that it is unable to know with any degree of certainty exactly what the controversy between the United States and the Georgia Public Service Commission is alleged to be and thus it cannot plead properly to meet the contentions of the plaintiff."

II.

The defendant does *not* ask that the court order the plaintiff to furnish *evidentiary facts*. It merely requests the court to require the plaintiff to sharpen and make precise his allegation as contained in paragraph 4 in order that the defendant may know with reasonable cer- [fol. 24] tainty whether the plaintiff charges the defendant with asserting jurisdiction, pursuant to the Georgia

Code Sections cited by him to regulate rates charged by carriers for the intrastate transportation within the State of Georgia of *all* property for the Federal Government or whether he charges that the Public Service Commission asserts jurisdiction only over a certain class or classes of such shipments for the Federal Government. Thus the defendant will be notified with sufficient clearness of the controversy which allegedly exists between it and the plaintiff and which it must meet in its responsive pleading.

The defendant urges the Court that he believes that only by thus obtaining a *more definite* statement of the plaintiff's allegations may he move with reasonable certainty as to the extent of the controversy to respond to the plaintiff's complaint.

/s/ Eugene Cook
The Attorney General

/s/ Ariel V. Conlin
Assistant Attorney General

[fol. 25] IN THE
UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

[Title omitted]

DEFENDANT'S MOTION TO DISMISS—filed April 28, 1961

The defendant moves the Court to dismiss the complaint in the exercise of its discretion on the ground that Sections 93-309, 310, 403, and 407 and Sections 68-613 and 68-614, Georgia Code Annotated, which the plaintiff prays this Court to declare unconstitutional insofar as they apply to carriers of property for the United States, do not in express terms apply to carriers transporting prop-

erty for the federal government nor has the Supreme Court of Georgia ever construed these Code Sections as to their applicability to carriers of property for the federal government.

Under these circumstances, the defendant contends that this Court should decline to take jurisdiction of the case to determine the constitutionality of the above mentioned Code Sections or to issue an injunction directed to the Georgia Public Service Commission prohibiting its enforcement of those Code Sections as to carriers transporting property for the federal government until the Georgia Supreme Court has construed the Code Sections in relation to the carriers of such property.

/s/ Eugene Cook
The Attorney General

/s/ Ariel V. Conlin
Assistant Attorney General

[fol. 26] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

[Title omitted]

PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION—filed May 4, 1961

The complaint in this action was filed on March 9, 1961, and in the prayer the plaintiff asks for a preliminary injunction on the grounds set forth in the affidavits of Colonel James W. Higgins, U. S. A., and Mr. George D. Krueger, of the General Services Administration, attached to the complaint. On April 27, 1961, the defendant,

Georgia Public Service Commission, filed a motion to dismiss the complaint, primarily on the ground that this is a proper case in which this Court should refer the parties to the state courts for the purpose of interpreting the state statutes involved. Comes now the plaintiff, the United States of America, and renews its prayer for a preliminary injunction set forth in the complaint and moves that the Court grant a preliminary injunction on the grounds set forth in the complaint and the affidavits attached thereto as heretofore set out. The plaintiff prays that this motion be heard at the same time that the defendant's motion to dismiss is heard.

/s/ Charles D. Read, Jr.
United States Attorney

/s/ E. Riggs McConnell
Attorney, Department of Justice
Washington 25, D. C.

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[fol. 27] IN
UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

AFFIDAVIT OF GEORGE D. KRUEGER—filed May 5, 1961

State of Georgia)
County of Fulton) ss

Personally appeared before the undersigned, a notary public in and for the County of Fulton, in the State of Georgia, the affiant, George D. Krueger, personally known to the undersigned notary public and who, after having first been sworn to tell the truth did, on oath, state as follows:

That he is employed by the General Services Administration, as its Regional Director, Transportation and Public Utilities Service, Region IV, Atlanta, Georgia, and has been duly assigned or delegated certain duties in connection with procurement of transportation services for the mass movements of household goods and personal effects of government employees.

Further, that the transportation data, as set forth in the comparative statement attached hereto and made a part hereof, covering movements of household goods of government employees for account of the United States Public Health Service, Communicable Disease Center, reflects charges assessed and collected by carrier at published tariff rates as opposed to charges which would have been assessed and collected by the Consolidated Van and Storage Companies, Inc., had shipments moved at the quoted rate covered by Contract No. GS-04T-C, is true and correct to the best of his knowledge and belief. Further deponent saith not.

Geo. D. Krueger
GEORGE D. KRUEGER

Subscribed and sworn to before me this 3rd day of May, 1961.

Montegue W. Hudson
MONTEGUE W. HUDSON, Notary Public
Georgia, State at Large

My Commission Expires July 6, 1961
(SEAL)

COMPARATIVE STATEMENT OF COSTS UNDER PBULISHED TARIFF RATES VERSUS NEGOTIATED CONTRACT RATE OF MASS MOVEMENT OF HH GDS OF CDC EMPLOYEES FROM SAVANNAH, GA., TO ATLANTA, GA., METROPOLITAN AREA AUGUST, 1960, THROUGH JANUARY, 1961, INCLUSIVE

	Shipments Moved and Charges Assessed at Published Tariff Rates Ga. HH Gds Tariff 1B, GaPSC-MF #3					Consolidated Van and Storage Co.'s, Inc. (Negotiated Contract Rate) (Contract No. GS-04T-6)			Difference Between Published Tariff Costs and Contractor's Cost (Dollars)
Family Name	Weight (Lbs)	Rate (Cwt)	Freight Charges (Dollars)	Packing and Crating Charges (Dollars)	Total Charges (Dollars)	Rate (Cwt) (Actual Weight)	Freight Charges (Includes any Pkg & Crating) (Dollars)	Total Charges (Dollars)	
Robert F. Witter	7750 AS 8000	310	248.00	177.50	425.50	398	308.45	308.45	117.05
Cipriano Cueto, Jr.	4980	350	174.30	212.00	386.30	398	198.20	198.20	188.10
William L. Farrior	5940	350	207.90	260.25	468.15	398	236.41	236.41	231.74
Walter Mitchell	2450	440	107.80	66.75	174.55	398	97.51	97.51	77.04
Vincent A. Sodiak	4900	350	171.50	77.25	248.75	398	195.02	195.02	53.73
Thomas B. Gaines	6200	362	224.44	113.75	338.19	398	246.76	246.76	91.43
C. W. Smith	1750 AS 2000	440	88.00	132.75	220.75	398	69.65	69.65	151.10
*Richard L. Moore	4853	350	169.86	148.60	318.46	398	193.15	193.15	125.31
*Eddie Jones	4853	350	169.86	148.60	318.46	398	193.15	193.15	125.31
	43676		1561.66	1337.45	2899.11		1738.30	1738.30	1160.81

*Families have not moved yet and these are just estimated weights and charges.

Prepared March, 1961, by
GSA, TPUS, Region IV, Atlanta, Ga.

[fol. 29] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION

[Title omitted]

PLAINTIFF'S REPLY TO THE DEFENDANT'S BRIEF ON ITS MOTION TO DISMISS—filed May 5, 1961

The complaint in this action was filed on March 9, 1961 and on March 28th, at the request of the defendant, an Order was entered extending the time for answering or otherwise pleading for thirty days after March 28th. On April 28th, in lieu of answering, the defendant filed a Motion For A More Definite Statement and a Motion To Dismiss. Upon receipt of these pleadings the plaintiff immediately on April 28th filed its main brief in the case, which had been previously prepared in the hope and expectation that the case would be submitted for final determination at an early date.

It appears that the defendant's Motion To Dismiss is based on the contention that the constitutional issue which is the sole issue raised by the complaint is not ripe for review by this Court because the Supreme Court of Georgia has not interpreted the sections of the statutes in question to be applicable to the United States—this though the Commission itself with the advice of the Attorney General of Georgia has interpreted the section as being applicable to the United States in one degree or [fol. 30] another for some time in the past. In Point IV of its main brief the United States deals with this aspect of the case and now relies on that portion of the brief in addressing itself to the defendant's Motion To Dismiss.

It will be noted that in all of the cases similar to the instant case, including those cited in the defendant's brief, there has been no intimation that this specially constituted District Court does not have jurisdiction to ultimately dispose of the constitutional issue raised by the complaint. On the contrary, it will be noted that the

mandates of the Supreme Court in these cases always expressly directed that the District Court retain jurisdiction pending any reference to state procedures for interpretative purposes. Further it must always be borne in mind that Congress provided for this specially constituted Court with its expedited procedures expressly for the purpose of passing on constitutional questions as quickly as possibly. Accordingly it seems implicit in the decisions that the reference to State Court procedures for purposes of interpretation must involve a problem of interpretation more complicated than the simple application of the maxim that the State statute is not to be interpreted so that a serious constitutional question is raised. It is respectfully submitted that a reference under such circumstances would simply be shifting the responsibility imposed on this Court by Congress to the State Courts thus defeating the whole purpose of the statutory scheme insofar as it contemplates expedition.

/s/ Charles D. Read, Jr.
United States Attorney

/s/ E. Riggs McConnell
Attorney,
Department of Justice,
Washington 25, D. C.

[fol. 31] IN
UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

[Title omitted]

PLAINTIFF'S RESPONSE TO THE DEFENDANT'S MOTION FOR A MORE DEFINITE STATEMENT—filed May 5, 1961

Comes now plaintiff United States of America and in response to the Defendant's Motion For A More Definite Statement shows:

1. The United States denies that the complaint is vague and ambiguous in any respect as set forth in the motion made by the defendant.

2. It is submitted that the issue in this case is clearly set forth in Paragraph VII, Section (c) of the complaint in which the United States asks this Court to declare that the section of the Georgia Statutes which are the subject matter of the action are unconstitutional insofar as they "prohibit carriers within the State from entering into contracts with the United States for shipment of property, including not only property owned by the United States but also the household effects of the personnel of the United States at rates other than those approved by the Georgia Public Service Commission." Stated more precisely, the United States objects to the power of the State to stipulate the rates in contracts entered into by it to carry out its Constitutional responsibilities with the carrier in Georgia for the carriage of *any* property [fol. 32] when the contract is the contract of the United States and the United States assumes the responsibility of paying the carrier for the carriage by the terms of the contract.

/s/ Charles D. Read, Jr.
United States Attorney

/s/ E. Riggs McConnell
Attorney,
Department of Justice,
Washington 25, D. C.

[fol. 33] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

[Title omitted]

ORDER GRANTING MOTION FOR PRELIMINARY INJUNCTION—May 5, 1961

It appearing that the plaintiff, at the time of the filing of the within complaint, prayed for an interlocutory injunction, which said prayer has been renewed in a motion filed in connection with a hearing set this date for consideration of the motion to dismiss the complaint, and it appearing from the affidavit of James W. Higgins, Colonel, United States Army, and from the affidavit of George D. Krueger, that the United States is being daily prevented from contracting for the transportation of household goods of the United States Government personnel except in accordance with freight rates and schedules specified by the defendant, and it appearing from the exhibit attached to the affidavit of George D. Krueger that transportation charges thus caused to be paid by the United States Government are substantially higher than could be contracted for by the United States but for the action of the defendant, and that such loss to the United States Government cannot be recouped, and that thus the plaintiff will suffer irreparable injury if a temporary injunction is not issued,

Now, therefore, it is ORDERED that the defendant be and it is hereby temporarily enjoined from exercising or attempting to exercise any jurisdiction over transporta-[fol. 34] tion charges for the transpotration at the United States Government's request of property of United States Government personnel pending the further order of this Court.

It is further ORDERED that the parties may, within ten days from the date hereof, file affidavits in support of

and in opposition to the continuation of the period during which this injunction shall remain in force. The parties may file additional briefs touching on the continuation of the temporary injunction at the time of filing such affidavits.

This 5th day of May, 1961.

/s/ Elbert P. Tuttle
United States Circuit Judge

/s/ Frank A. Hooper
United States District Judge

/s/ Boyd Sloan
United States District Judge

[fol. 35] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION

[Title omitted]

ORDER DENYING MOTION TO DISMISS--May 5, 1961

The motion to dismiss, heretofore filed by the defendant, is in effect a motion for this Court to abstain from determining the issues on the merits until the Georgia Supreme Court has construed the Code sections in relation to the carriers of the property over the transportation of which the defendant assumes jurisdiction.

It appearing that the plaintiff sought to intervene in one proceeding pending before the defendant touching on this question, and that its right to intervene was denied by the defendant, and it not appearing that there is any convenient or prompt or effective means by which the issue here presented can be passed upon by the courts of the state of Georgia, except by the filing of a suit in the Georgia courts by the United States, the motion is hereby DENIED.

This 5th day of May, 1961.

/s/ Elbert P. Tuttle
United States Circuit Judge

/s/ Frank A. Hooper
United States District Judge

/s/ Boyd Sloan
United States District Judge

[fol. 36] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION

[Title omitted]

ORDER GRANTING MOTION FOR MORE DEFINITE STATEMENT—May 5, 1961

The defendant's motion coming on for a hearing and it appearing that the defendant's actions with reference to shipments of property belonging to the United States may differ from its actions with respect to household and personal effects of "personnel of the United States," and it appearing that the complaint does not expressly charge that the defendant is now asserting jurisdiction to regulate the charges charged by carriers for the transportation in intrastate commerce within the state of Georgia of property owned by the United States,

It is ORDERED that the within motion be and the same is hereby GRANTED to the extent that the plaintiff specify the type of transportation concerning which it charges the defendant is seeking to exercise jurisdiction.

This 5th day of May, 1961.

/s/ Elbert P. Tuttle
United States Circuit Judge

/s/ Frank A. Hooper
United States District Judge

/s/ Boyd Sloan
United States District Judge

[fol. 37] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION

[Title omitted]

MOTION FOR SUMMARY JUDGMENT—filed May 17, 1961

Comes now the United States of America, plaintiff, and avers that from statements and representations made by officials and counsel for the defendant, Georgia Public Service Commission, in the public press and in open court, and particularly in view of the more definite statement of the issue involved filed by the plaintiff this date, it appears that there is no genuine issue of material fact existing between the plaintiff and the defendant in this action, and that the Court can finally decide the case as a matter of law.

Now, therefore, on the attached affidavits of Captain Harry B. Leiser, United States Navy, and Mr. Fred Denniston, of the General Services Administration of the United States Government, and on the pleadings and affidavits heretofore filed, the plaintiff moves this Court to enter a summary judgment in its favor pursuant to Rule 56(a) of the Rules of Civil Procedure.

/s/ Charles D. Read, Jr.
United States Attorney

/s/ E. Riggs McConnell
Attorney, Department of Justice
Washington 25, D. C.

[fol. 38] ATTACHMENT TO MOTION

AFFIDAVIT

STATE OF VIRGINIA)
COUNTY OF ARLINGTON) SS

Harry W. Leiser, Captain, Supply Corps, Department of the Navy, deposes and says:

1. That he is the Director of Freight Traffic of the Military Traffic Management Agency (MTMA), with offices in Washington, D. C., having assumed the duties of this office upon the retirement of Colonel James W. Higgins, USA, who executed an affidavit which was previously filed in this action in connection with the prayer of the United States for a temporary injunction.

2. That, as Director of Freight Traffic of MTMA, it is his duty to supervise rate negotiation and analysis, routing and utilization of carriers, and the development of improved methods for the shipment of freight by elements of the Department of Defense (DOD), including the shipment of the household goods and personal effects of Department of Defense Personnel.

3. That he is familiar with the proceedings already held in *U. S. v. Georgia Public Service Commission*, Civ. No. 7528, N. D. of Georgia, and is advised that the counsel for the Georgia Public Service Commission has stated that the Commission no longer asserts the right and power to regulate the rates for the shipment of property owned by the United States but continues to assert the right and power to regulate the rates for the shipment of the household goods and personal effects of personnel of the Government of the United States. Accordingly, in this affidavit he will deal exclusively with shipments of the latter type.

[fol. 39] 4. That since earliest times the movement of impedimenta of military personnel has been an integral part of military operation and movements. On large posts and installations in the United States today there is a separate office under the command of the Transportation Officer, charged with the duty of shipping the household effects of officers and certain enlisted personnel subject to change of station. Thus when orders are received

for a change of station the recipient merely turns over copies of his orders to the officer in charge of household goods and without any traffic management attention to his household goods by himself proceeds to his new station. The Transportation Officer makes all the arrangements with the carrier for the crating, packing, pickup, line haul, and delivery of the property. It is shipped on government bill of lading and thereafter audited as any other government account. The carrier is paid by a United States disbursing officer with a government check. Thus, the transportation of such household goods is for the United States just as much as any other government traffic.

5. That in so far as members of the uniformed services are concerned, Congress has expressly provided that upon the change of station personnel are entitled to transportation of their baggage and household effects at government expense, including incidental services such as packing, crating, drayage, and temporary storage. (See Career Compensation Act, 37 USC 253(c)). The *Joint Travel Regulations for the Uniformed Services, Chapt. 8*, which were issued for carrying out the Congressional purpose expressed in this state are comprehensive. The payment for this transportation service by the United States is considered an integral part of the member's compensation for serving his country. Similar provisions [fol. 40] are made for the shipment of the household effects of civilian personnel of the Department of Defense when the transportation is procured and arranged for by an agency of DOD.

6. Provision for the shipment of the household effects of the personnel of the Department of Defense and its components is a very important part of the defense program at the present time. Approximately $100 million a year is spent for this purpose. Modern warfare requires highly trained specialists and technicians and every effort is being made to retain qualified men in the service, particularly men with years of experience and training. These men naturally marry and have families and the proper movement of their household goods is an important morale factor.

7. The policy of the Department of Defense in carrying out this part of the defense program is set out in DOD Directive No. 4500.27, July 1, 1960. A copy of this directive is attached hereto. It will be noted that the main objective of the policy is to obtain "high quality service to military and civilian personnel of the Department of Defense in the transportation of their household goods at the lowest over-all cost to the government." Further, in accordance with the general policy of the United States in the procurement of services, it is the policy of this Agency to secure for the United States the benefits of free competition and to give to all citizens equal rights to compete for government business (See: 10 USC 2301 et seq.).

8. The statutes of the United States relating to the procurement of transportation and services incidental to the movement of the household effects of the personnel of the Department of Defense and the regulations issued pursuant thereto do not make any distinction between [fol. 41] shipments which are interstate and those which are intrastate in character, but on the contrary apply uniformly to all shipments regardless of the geographic location of the termini.

9. The affiant avers that if all fifty states were to regulate the rates for the shipment of the household effects of the personnel of the Defense Department it would be impossible to carry out or to comply with the national procurement statutes and implementing directives.

/s/ Harry W. Leiser
HARRY W. LEISER
Captain, SC, USN

STATE OF VIRGINIA)
COUNTY OF ARLINGTON) ss:

Sworn and subscribed to before me this 16th day of May 1961.

/s/ Netha L. Healy
(SEAL) Notary Public, Arlington County
My Commission Expires May 28, 1962

[fol. 42] ATTACHMENT TO AFFIDAVIT

July 1, 1960

NUMBER 4500.27

(SEAL) ASD (S&L)

DEPARTMENT OF DEFENSE DIRECTIVE

SUBJECT Transportation of Household Goods of Military and Civilian Personnel

References: (a) DOD Directive 5160.2, "Single Manager Assignment for Airlift Service."
(b) DOD Directive 5160.10, "Single Manager Service Assignment for Ocean Transportation."
(c) DOD Directive 5160.14, "Single Manager Service Assignment for Traffic Management Within the United States."
(d) DOD Instruction 4500.13, "Transportation of Household Goods of Uniformed Personnel by Motor Van Carriers," February 20, 1958, as amended (cancelled herein).
(e) DOD Instruction 4500.21, "Transportation of Unerated Household Goods of Uniformed Personnel by Freight Forwarders," October 13, 1955, as amended (cancelled herein).
(f) DOD Directive 4500.26, "Transportation of Unerated Household Goods of Military and Civilian Personnel," December 8, 1959, as amended (cancelled herein).

I. PURPOSE, APPLICABILITY AND OBJECTIVE

A. This Directive assigns authority and responsibilities and establishes policies relative to the transportation of household goods of military and civilian personnel of the Department of Defense (1) between points within the United

States and (2) between the United States and other areas in through bill of lading service, when the transportation is procured and arranged by an agency of the Department of Defense.

B. The objective of this Directive is to assure high quality service to military and civilian personnel of the Department of Defense in the transportation of their household goods at the lowest over-all cost to the Government.

II. CANCELLATIONS

References (d), (e), and (f) are cancelled.

[fol. 43]

III. DEFINITIONS

As used herein—

A. "Lowest over-all cost" means the aggregate of all costs which are known or can reasonably be estimated in connection with a shipment (including accessorial charges and amounts paid by the Government for loss and damage).

B. "United States" means the forty-eight contiguous states and the District of Columbia.

IV. POLICIES

A. *Comparative Costs Among Modes of Transportation.*

Section 303(e) of the Career Compensation Act of 1949, as amended (63 Stat. 802), provides in part that ". . . members of the uniformed services . . . in connection with a change of station (whether temporary or permanent) [shall be entitled] to transportation (including packing, crating, drayage, temporary storage and unpacking) of baggage and household effects, or reimbursement therefor . . . without regard to the comparative costs of the various

modes of transportation." However, comparative costs of the various modes of transportation may be disregarded only when all carriers within the mode(s) which would produce the lowest overall cost to the Government cannot provide the required services satisfactorily. In such instances the next lowest cost mode in which carriers can provide satisfactory service shall be used. The same principle shall apply in shipping household goods of civilian personnel when the transportation is procured and arranged by an agency of the Department of Defense.

B. *Quality of Service*

The quality of service provided by carriers shall be evaluated, in comparison with uniform standards prescribed by the Single Manager for Traffic Management, on the basis of all available information, including, but not limited to, the following:

1. Reports of inspections of carrier facilities, transportation equipment, and service practices.
2. Carrier performance reports by military and civilian personnel in connection with the transportation of their household goods.
3. Official reports and actions by regulatory bodies which serve as factual indicators of carrier performance.

[fol. 44] 4. Claims for loss and damage filed against carriers and the Government, and settlements thereof.

C. *Qualified Carriers*

Only those carriers shall be qualified which:

1. Are authorized according to law to provide the required services;

2. Provide adequate evidence of satisfactory transportation equipment and financial responsibility and reliability;
3. Have made specific arrangements for the use of a satisfactory terminal facility consisting of a warehouse, loading and unloading area, and office sufficiently near the shipping activity or point of origin of the shipment to assure satisfactory service and permit ready inspection of the facility and the household goods stored or serviced therein;
4. When required, have executed and filed with the appropriate office a household goods service tender or other document authorized in lieu thereof;
5. Assume full responsibility for arranging for placing in a satisfactory terminal facility those shipments which require storage in transit at destination; and
6. Provide high quality service.

D. *Selection of Carrier and Distribution of Traffic*

1. Only those carriers shall be used which satisfy the requirements of IV. C. at the lowest over-all cost to the Government. Connecting carriers on a joint carriage arrangement must meet all of the requirements for a qualified carrier except IV. C. 3. and also IV. C. 5 when they are not terminating carriers.
2. To the extent practicable, traffic shall be distributed by destination state or other area outside the United States among these carriers in equitable proportions, subject to the following:

   a. Carriers' ability to respond to requirements of the traffic offered for movement. When a carrier is offered a shipment and cannot perform, the carrier shall be charged with the offer in the same manner as if it had performed.

[fol. 45]

b. At each shipping activity, additional shipments shall be offered to a carrier or carriers who it has been determined that it or they provide an exceptionally high quality of service as compared with other carriers serving the activity. Such shipments shall not be charged to normal distribution.

3. For traffic distribution purposes, carriers under effective common financial or administrative control shall be treated as a single carrier. The service tender, or document in lieu thereof, filed by each carrier shall include: (a) name(s) of any other carrier(s) serving the same shipping activity which are under effective common financial or administrative control with the filing carrier, or (b) a statement that the filing carrier is independent in finance and administration from all other carriers serving the same shipping activity.

4. When consistent with other provisions of this paragraph (IV. D.),

a. A request by the property owner for non-use of a carrier because of specific prior unsatisfactory service shall be honored if another carrier is available to move the shipment at the same over-all cost to the Government.

b. A preference for a carrier expressed by the property owner shall be honored.

5. Traffic shall be distributed according to the originating carrier rather than according to agent. When a joint carriage arrangement is utilized, shipments transported thereunder shall be considered as having been received by each participating carrier qualified to serve the origin point.

6. Records of traffic distribution shall be maintained by destination state or other area outside the United States.

E. *Non-use of Carriers*

1. Carriers which have indicated in writing a desire to participate in Department of Defense traffic and are not considered to be qualified shall be notified in writing of their deficiencies. Such carriers shall be provided an opportunity to (a) appeal the decision, or to (b) receive further consideration after correcting the deficiencies causing the refusal.

[fol. 46] 2. Carriers which have been qualified, but which subsequently fail to provide high quality service, fail to meet the other requirements of IV. C., or commit unethical acts, shall be suspended in accordance with criteria and procedures established by the Single Manager for Traffic Management. Such carriers shall be provided an opportunity to (a) appeal the decision, or (b) request requalification after correcting the deficiencies causing the suspension.

F. *Use of Storage in Transit*

When commercial temporary storage is required in connection with transportation storage in transit, as defined in carriers' tariffs, shall be used except when it is clearly evident, after considering such factors as over-all cost, and liability of the carrier versus that of the warehouseman, that the best interest of the Government and the property owner can be served only by the use of contract storage.

G. *Use of Untied States Carriers*

1. The contracting carrier shall be a United States organization owned and controlled by

citizens of the United States except when the Single Manager for Traffic Management has determined that a United States carrier cannot provide timely movement.

2. When commercial ocean or air carriers or operators are to be used as a part of through bill of lading service between the United States and other areas, only ships of United States registry engaged in regular berth service or United States flag aircraft shall be used except when the Single Manager for Ocean Transportation or the Single Manager for Airlift Service, respectively, has determined they are not available for timely movement.

V. IMPLEMENTATION

A. The Single Manager for Traffic Management (reference (e)) is assigned authority and responsibility for:

1. Implementing this Directive by prescribing, in agreement with the heads of the other military services, uniform joint regulations which will include but not be limited to: (a) service tenders or other documents authorized in lieu thereof; (b) standards for quality of service; (c) procedures for measuring and comparing the quality of service provided by carriers; (d) criteria and procedures for offering additional shipments and for qualifying, selecting, and suspending carriers; and (e) standards, formulae, and procedures for determining the lowest overall cost.

[fol. 47] 2. Assuring compliance with the above-mentioned regulations. Compliance will be accomplished through command channels of the military services, by appropriate means, including action based on recommendations by representatives of the Military Traffic

Management Agency resulting from staff visits to all activities of the military services within the United States which ship household goods.

3. Negotiating with commercial carriers and operators on all matters incident to the transportation of household goods within the United States and between the United States and other areas in through bill of lading service. Negotiations with commercial air or ocean operators for transportation as a part of through bill of lading service between the United States and other areas, or with air carriers for service within the United States under long term contracts, shall be conducted by the Single Manager for Airlift Service (reference (a)) or the Single Manager for Ocean Transportation (reference (b)). The agreement of the Single Manager for Traffic Management shall be secured prior to the initiation of such negotiations.

B. The service tenders or other documents authorized in lieu thereof referred to in V. A. 1. shall require carriers providing through bill of lading service between the United States and other areas to furnish after the fact reports of shipments to the Single Manager for Traffic Management, the Single Manager for Ocean Transportation, and the Single Manager for Airlift Service, as prescribed by uniform joint regulations.

C. The Single Manager for Traffic Management shall consult with the Small Business Administration and appropriate representatives of the transportation industry on those portions of joint procedures, standards, criteria and regulations directly affecting the transportation industry prior to their publication.

D. The Single Manager for Traffic Management shall develop, with the joint participation of

the heads of the other military services, all standards, programs and procedures relative to the transportation of household goods. He shall also keep the Single Manager for Ocean Transportation and the Single Manager for Airlift Service informed on plans and other matters involving through bill of lading service between the United States and other areas.

E. The implementation of this Directive shall not abrogate the functions and responsibilities of the Single Manager for Airlift Service or the Single Manager for Ocean Transportation, nor, in overseas areas, of the military services or the unified or specified commands.

[fol. 48]

VI. REQUIRED ACTION

A. Joint regulations implementing this Directive shall be issued and action taken to assure uniformity of application in accordance with the schedule in VI. C. Such regulations, amendments thereto, and reissues thereof shall be coordinated with the Assistant Secretary of Defense (Supply and Logistics) prior to publication, and two copies of such documents shall be forwarded to him within thirty days after publication.

B. Provisions of all regulations of the Military Departments implementing references (d) and (e) shall remain in effect until superseded by the joint regulations implementing this Directive.

C. The schedule for implementation of this Directive is:

September 1, 1960—Completion of printing and distribution of Implementing Regulations.

September 7 — December 1, 1960 — Conduct conferences with Transportation Officers throughout the United States and overseas

areas. Carriers will be invited to similar conferences.

December 1, 1960—Effective date of Implementing Regulations.

VII. EFFECTIVE DATE

This Directive is effective upon publication.

/s/ Thomas Gates
Secretary of Defense

[fol. 49] ATTACHMENT TO MOTION

AFFIDAVIT

District of Columbia) ss.

Frederick W. Denniston, first being duly sworn, on his oath deposes and says: That he is Assistant Commissioner, Transportation and Public Utilities Service of the General Services Administration, United States Government, that he is familiar with the issues before the Court in *United States* v. *Public Service Commission of Georgia*, and that he is familiar with the laws and regulations relative to the procurement of transportation services for the mass movements of household goods and personal effects of employees of the civilian executive agencies of the United States Government.

The purpose of this affidavit is to apprise the Court of the Federal law and administrative orders under which the transportation of household goods owned by employees of the executive agencies of the U. S. Government is undertaken.

The basic legislation on this subject is provided in the Act of August 2, 1946, 60 Stat. 806, as amended, (5 U.S.C. § 73b-1). This provides, as relevant:

"§ 73b-1. Travel, transportation and storage expenses—Transferred employees; advancement of funds; limitations.

"(a) Under such regulations as the President may prescribe, any civilian officer or employee of the Government who, in the interest of the Government, is transferred from one official station to another, in-
[fol. 50] cluding transfer from one department to another, for permanent duty, shall, except as otherwise provided in this section, when authorized or approved by such subordinate official or officials of the department concerned as the head thereof may designate for the purpose, be allowed and paid from Government funds the expenses of travel of himself and the expenses of transportation of his immediate family (or a commutation thereof in accordance with section 73a of this title) and the expenses of transportation, packing, crating, temporary storage, drayage, and unpacking of his household goods and personal effects (not to exceed seven thousand pounds net weight); uncrated or eight thousand seven hundred and fifty pounds if crated . . . .

"(b) In lieu of the payment of actual expenses of transportation, packing, crating, temporary storage, drayage, and unpacking of household goods and personal effects, in the case of such transfers between points in continental United States, reimbursement shall be made to the officer or employee on a commuted basis (not to exceed the amount which would be allowable for the authorized weight allowance) as such rates per one hundred pounds as may be fixed by zones in regulations prescribed by the President . . ."

Regulations have been promulgated by the Bureau of the Budget under Presidential Delegation No. 10530 of May 10, 1954, 3 C.F.R., 1954 Supp., P. 55, as amended, regarding the commuted rate system. One of these is Bureau of the Budget Circular No. A-37 of December 30, 1957, which provides regulations governing the transportation of household goods and personal effects of

civilian employees upon transfer of official station within the continental United States. This regulation provides for the use of government bills of lading instead of the commuted rate system for mass movements of household goods and personal effects of personnel transferred between the same two official stations when significant savings to the Government in transportation costs will result.

This basic legislation and the Bureau of the Budget orders have been implemented by General Services Ad- [fol. 51] ministration orders. The implementation is pursuant to the authority vested in the Administrator of General Services by Sec. 201 of the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. 481:

> "Sec. 201. (a) The Administrator shall, in respect of executive agencies, and to the extent that he determines that so doing is advantageous to the Government in terms of economy, efficiency, or service, and with due regard to the program activities of the agencies concerned—
>
> "(1) prescribe policies and methods of procurement and supply of personal property and nonpersonal services, including related functions such as contracting, inspection, storage, issue, property identification and classification, transportation and traffic management, management of public utility services, and repairing and converting; and
>
> • • • • •
>
> "(3) procure and supply personal property and nonpersonal services for the use of executive agencies in the proper discharge of their responsibilities, and perform functions related to procurement and supply such as those mentioned above in subparagraph (1): *Provided*, That contracts for public utility services may be made for periods not exceeding ten years; and • • •"

Attached hereto and made a part hereof is a copy of GSA Order TPS 7460.1, dated March 15, 1960, which establishes procedures for handling mass movements of

household goods and personal effects. This order is promulgated by the Commissioner, Transportation and Public Utilities Service, pursuant to a delegation of authority from the Administrator (ADM 5450.3, Change 4, of July 31, 1959). Also attached is a copy of Circular No. A-37, Transmittal Memorandum No. 4 of the Executive Office of the President (Bureau of the Budget) which provides for the amendment of regulations to permit the [fol. 52] use of government bills of lading for transportation of household goods instead of the commuted rate system, for mass movements of household goods transferred between the same two official stations when significant savings will result.

The Federal Property and Administrative Services Act of 1949, as amended, *supra*, Sec. 302(c), provides that all purchases and contracts for property and services shall be made by advertising, as provided in Sec. 303 of the same Act. Purchases and contracts may be negotiated without advertising only in certain limited circumstances.

The legislation and implementing orders apply uniformly to intrastate as well as interstate traffic.

[fol. 53] Frederick W. Denniston deposes and says: That he has read the foregoing and attachments thereto, and knows the contents thereof, and that the matter and things therein stated are true of his own knowledge, save and except those matters therein stated on information and belief, and as to those he believes them to be true.

FREDERICK W. DENNISTON

Subscribed and sworn to before me this 16th day of May, 1961

CHARLES E. MILFORD
Notary Public

My commission expires August 14, 1961.

GSA-WASH DC 61-12363

[fol. 54] ATTACHMENT TO AFFIDAVIT

GENERAL SERVICES ADMINISTRATION
Washington 25, D. C.

TPS 7460.1
March 15, 1960

GSA ORDER

SUBJECT: Procedures for Handling Mass Movements of Household Goods and Personal Effects

1. PURPOSE: This order promulgates procedures for handling mass movements of household goods and personal effects of employees of civilian agencies, upon transfer of official station within the continental United States, in accordance with the provisions of Bureau of the Budget Circular No. A-37 of December 30, 1957, as amended by Transmittal Memorandum No. 4, dated February 20, 1960.

2. BACKGROUND: Bureau of the Budget Circular No. A-37, as amended, provides for the use of Government bills of lading, instead of the commuted rate system, for mass movements of household goods transferred between the same two official stations when significant savings will result. The responsibility for the traffic management of such movements for civilian agencies has been assigned to GSA.

3. OBJECTIVE: The objective is to evaluate mass movements of household goods and personal effects and, when feasible, to negotiate with carriers to effect the most economical basis for the movement of such household goods and personal effects.

4. APPLICABILITY: The procedures contained in the attachment to this order are applicable to all GSA employees when engaged in the handling of mass movements of household goods and personal effects for civilian agencies.

5. EFFECTIVE DATE: The provisions of this order shall become effective April 1, 1960.

[fol. 55]

6. FORMS: This order requires the use of the following forms: Standard Form 32 (Oct. 1957 Edition), General Provisions (Supply Contract); Standard Form 33, Invitation, Bid, and Award; Standard Form 36, Continuation Sheet (Supply Contract); and GSA Form 1465, General Services Administration, Transportation and Public Utilities Service Contract.

/s/ Thomas A. Kennedy
for
SAMUEL J. SCOTT
Commissioner
Transportation and Public Utilities Service

GSA WASH DC 60-10573

Distribution: A, B, C (TPS and LT only), F, G, H (TPS only) Attachment

[fol. 56]

TPS 7460.1
March 15, 1960

ATTACHMENT

1. GENERAL. Bureau of the Budget Circular No. A-37 of December 30, 1957, prescribes regulations governing the transportation of household goods and personal effects of civilian employees upon transfer of official station within the continental United States. These regulations, as amended by Transmittal Memorandum No. 4, dated February 20, 1960, (see Appendix A) provide for the use of Government bills of lading, instead of the commuted rate system, for mass movements of household goods and personal effects of personnel transferred between the same two official stations when significant savings to the Government in transportation costs will result.

2. CRITERIA FOR USE OF GOVERNMENT BILL OF LADING METHOD. The Government bill of lading method, prescribed by Bureau of the Budget Circular No. A-37, as amended by Transmittal Letter No. 4, dated February 20, 1960, shall be used when the following criteria are met:

a. When the estimated aggregate weight of the household goods and personal effects of a group of employees of a civilian agency, to be moved between the same two official stations over a period of one year (or over a longer period if the agency believes there is opportunity for substantial savings), is fifty thousand (50,000) pounds or more. (Such a movement, for the purpose of this order, shall be considered a "mass movement"); and

b. When the amounts which the Government would pay under the commuted rate system would exceed by ten percent (10%) or more the cost for transportation services of satisfactory quality under the GBL method; or, when the cost difference is less than ten percent (10%) but the dollar amount of the savings is so substantial (due to weights and distances of

shipments) that use of the GBL method is deemed by the agency to be justified.

3. REQUESTS FROM CIVILIAN AGENCIES. When GSA receives information from civilian agencies regarding proposed mass movements of household goods and personal effects of employees to be transferred between official stations in continental United States, [fol. 57] or receives requests from civilian agencies for traffic management advice and assistance relative to such shipments, the matter shall be forwarded immediately to the Commissioner, TPUS, or the appropriate Regional Director, TPUS.

4. INFORMATION REQUIRED. Upon receipt of a request for traffic management advice or assistance in connection with a mass movement of household goods or personal effects, TPUS shall obtain adequate information to establish specifications (see paragraph 9.c., below), for the moving services required, to obtain bids or offers from eligible carriers, to determine the feasibility of making shipments on Government bills of lading, and when appropriate, to arrange for transportation contracts with carriers for the moving services. This information shall include:

a. Full name of agency, office, or activity to be transferred;

b. Official station (city and state) from which transfer will be made;

c. Official station (city and state) to which transfer will be made;

d. Number of employees to be transferred who will ship household goods or personal effects;

e. Estimated aggregate weight of the household goods and personal effects to be shipped by the group of employees to be transferred, as well as estimated weight of each individual shipment;

f. Number of employees who will move a piano or any other article which may require the use of heavy

lift or special equipment for removal from present location or placement in new location;

g. Date on which first shipment will be ready to move;

h. Anticipated date of completion of the last shipment in the mass movement;

i. The exact point of origin of any shipments which will originate at addresses which are more than 25 miles outside the boundaries or city limits of the [fol. 58] official station from which the group transfer will be made;

j. The exact point of destination of any shipments which will be made to addresses which are more than 25 miles outside the boundaries or city limits of the official station to which the employees will be transferred; and

k. Any other information that may be required to comply with Bureau of the Budget Circular No. A-37, as amended by Transmittal Memorandum No. 4, dated February 20, 1960.

The 25-mile zones prescribed in subparagraphs i and j, above, conform, generally, to the commercial practices of the household goods carriers. These zones have been established as guidelines only and are not to be construed as maximum distances for the purpose of inviting bids or requesting offers from carriers for rates and services.

5. EVALUATION OF INFORMATION. The information received under paragraph 4., above, shall be evaluated to determine the approximate quantity of goods to be shipped and the similarity and general patterns of the individual shipments. This evaluation will reveal whether or not the quantity is sufficient or the individual shipments are sufficiently similar to justify inviting bids or requesting offers from eligible carriers. For example, if only a small proportion of the individual shipments comprising a proposed mass movement will originate or terminate outside the 25-mile radius of the official station, that

factor should not preclude negotiation or advertising for a mass movement. However, if the information shows that a substantial number of the individual shipments will originate or terminate at various points outside the 25-mile origin and destination zones, so as to prevent a grouping of a sufficient number of shipments with similar origins and destinations, the proposed mass movement may not be susceptible to inviting bids or requesting offers of rates which may produce substantial savings as provided in paragraph 2.b., above.

6. DETERMINING SERVICES REQUIRED. Before inviting bids or requesting offers from carriers for mass movements of household goods and personal effects, TPUS shall determine the type and extent of the services which the carrier will be required to perform. Specifications containing the terms and conditions for performing such services shall conform to the standards set forth in paragraph 9.c., below. These specifications provide a uniform basis upon [fol. 59] which the interested carriers may submit bids or offer rates for the movement. Such specifications shall be made a part of the transportation contract.

7. REQUESTING RATES FROM CARRIERS.

a. *General.* When the evaluation by TPUS indicates that savings to the Government as provided in paragraph 2.b., above, may result from arranging with carriers for rates for a mass movement of household goods and personal effects, TPUS shall request eligible carriers to submit rate offers or bids.

b. *Methods Used.*

(1) *Formal Advertising.* Except when the exigency of the movement precludes such action, all requests for rates for mass movements of household goods and personal effects shall be made by formal advertising on Standard Form 33, Invitation, Bid, and Award. A copy of the specifications outlining the services required and the terms and conditions under which they will be performed, as

set forth in paragraph 9.c., below, shall be attached to each Standard Form 33.

(2) *Negotiation.* When the exigency of the movement will not admit the delay incident to formal advertising, negotiation for the services is authorized. When negotiation is necessary, all information normally included in formal advertising, including a statement of the services required and the terms and conditions under which they will be performed, shall be furnished to the carriers. If requests for offers are made orally, such requests shall be confirmed promptly in writing, accompanied by the written specifications. When negotiation is deemed necessary, the file shall contain appropriate Findings and Determination.

c. Unit Price. Carriers shall be requested to furnish rate offers or bids on the basis of a single rate per 100 pounds to cover *all* of the services which the carrier would be required to perform under the specifications to provide the owner of the property with a complete moving service.

[fol. 60] d. *Eligible Carriers.* All certificated household goods carriers who can provide through moving services from the origin area to the destination area shall be given an opportunity to submit rate offers or bids for mass movements of household goods and personal effects. Eligible carriers shall include independent movers as well as those firms who are members of the various household goods movers' associations or representatives of nation-wide van lines.

8. DETERMINING METHOD OF SHIPMENT. TPUS shall evaluate the rate offers or bids received from carriers and determine the estimated cost of the mass movement of household goods and personal effects on Government bills of lading, and shall inform the interested civilian agency. The agency effecting the transfer will make the final determination as to whether a contract will be made with a carrier for shipment of the goods on Government bills of lading

or whether the commuted rate system will be used. When requested, TPUS shall advise and assist the agency in its determination.

9. CONTRACTING FOR TRANSPORTATION SERVICES.

a. *General.* If the civilian agency decides, after evaluation of the transportation cost information and advice furnished by TPUS, that it will be advantageous to the Government to ship the household goods and personal effects of the mass movement on Government bills of lading, a transportation contract must be entered into between the carrier and the United States Government to cover performance of the required services pursuant to the prescribed specifications. The preparation of documentation, payment of the carrier's bills, and performance of all other functions incident to the shipments are responsibilities of the civilian agency. However, when requested, TPUS shall perform these functions for the agency.

b. *Forms to be Used.*

(1) *Formal Advertising.* When the rates are obtained by formal advertising, the award shall be made on Standard Form 33, Invitation, Bid, and Award. The following additional forms shall be [fol. 61] attached to Standard Form 33 and made a part of the contract:

(a) Standard Form 36, Continuation Sheet (Supply Contract), when required;

(b) Specifications for the movement; and

(c) Standard Form 32 (Oct., 1957 Edition), General Provisions (Supply Contract).

(2) *Negotiated Contract.* When the rates are obtained through negotiation, a contract will be prepared on GSA Form 1465, General Services Administration, Transpotration and Public Utilities Service Contract. The following additional forms shall be attached to GSA Form 1465 and made a part of the contract:

(a) Specifications for the movement; and

(b) Standard Form 32 (Oct., 1957 Edition), General Provisions (Supply Contract).

c. *Specifications for the Movement.* Specifications for the movement of household goods and personal effects for each mass movement shall be prepared and made an integral part of the transportation contract. These specifications shall describe the services required and outline the terms and conditions for performance. The specifications shall be prepared in the format shown below and shall contain all of the terms, conditions, and provisions listed. No deviations from these standards shall be made unless specifically authorized by the Commissioner, TPUS.

. . . . .

(Date)

SPECIFICATIONS
FOR
MOVEMENT OF HOUSEHOLD GOODS AND PERSONAL EFFECTS OF GOVERNMENT EMPLOYEES TRANSFERRED FROM (City and State) TO (City and State) INCIDENT TO THE RELOCATION OF (Name of Agency)

[fol. 62]

SERVICES REQUIRED: The Contractor shall perform all the services required to remove the property from its present location, transport it to the new location, and place the property in the new location pursuant to the instructions of the owner of the property. These services shall include packing and/or crating required for safe transportation; disassembling the property when necessary; pickup of the property at its present location; transportation of the property to destination; delivery of the property to its new location; unpacking and/or uncrating as required; reassembling any of the property which was disassembled for transportation; placement of the property in the new location as specified by the

owner or his representative; and any other service which would normally be included in a complete moving service. The property to be moved, the present location, and the new location are as specified in this Contract.

PROPERTY TO BE MOVED: The property to be moved under this Contract consists of the household goods and personal effects which are the property of those Government employees who are transferred from (City and State) to (City and State) incident to the relocation of (Name of Agency). The aggregate weight of the individual shipments has been estimated by (Name of Agency) to be pounds. This estimate is based upon the anticipated transfer of approximately employees, each having an average of pounds of household goods and personal effects. However, this weight is not to be construed as a guarantee of the actual weight of such property, which may be in excess of or less than the said estimated weight. The Government does not guarantee any particular volume of traffic described herein.

PRESENT LOCATION: The property to be moved under this Contract is located at the addresses to be specified by the owners of the property anywhere within (City and State) and within a radius of miles from the city limits of (City and State).

NEW LOCATION: The new location to which the property shall be moved under this Contract is the address to be specified by each of the owners of the property anywhere within the city of (City and State) and within a radius of miles from the city limits of (City and State).

[fol. 63]

LABOR, MATERIALS, AND EQUIPMENT: The Contractor shall furnish all the labor, materials, and equipment necessary to perform all the services contemplated under this Contract in an orderly, timely, and efficient manner.

PACKING AND OR CRATING AND PADDING: The Contractor shall perform all of the packing and/or crating and padding necessary for the protection of the property to be transported. All packing containers, including, but not limited to, barrels, boxes, wardrobes, and cartons; all crating materials; and all padding materials and equipment, shall be furnished by the Contractor. The Contractor shall also furnish or cause to be furnished, when necessary, padding or other protective materials for the interior of the buildings, including elevators, from and to which the property shall be moved under this Contract.

DISASSEMBLING AND REASSEMBLING OF PROPERTY: The disassembling of property, such as beds and sectional bookcases, when necessary for the safe and efficient transportation of the property, shall be performed by the Contractor. When it is necessary to disassemble property for shipment, such property shall be reassembled by the Contractor upon delivery at the new location.

UNPACKING AND OR UNCRATING AND PLACEMENT OF PROPERTY: The Contractor shall perform all unpacking and or uncrating of property which was packed and/or crated for movement under the provisions of this Contract. The Contractor shall also place the property in the new location as instructed by the owner of the property or his authorized representative.

CONSOLIDATION OF SHIPMENTS: The Contractor shall have the right to consolidate two or more shipments of property under this Contract, or to consolidate shipments of property under this Contract with commercial shipments of household goods and personal effects; provided, however, that such consolidation shall not prevent the completion of any shipment of property hereunder within the time limitation set forth in this Contract.

[fol. 64]

TIME LIMITATION: All services under this Contract shall be performed promptly. Shipments of property, whether or not held for consolidation, shall be completed within (days) from the date on which the owner advises the Contractor that the property is available for shipment, unless a longer period of time in which to ship is agreed to by the owner of the property. Completion of shipments as herein referred to shall include placement of the property in the new location as instructed by the owner of the property or his authorized representative.

AUTHORIZATION FOR SHIPMENTS: (Name of Agency) will furnish the Contractor a list of the names and addresses of the Government employees who are authorized to move their household goods and personal effects under this Contract. The owner of the property will make a request to the Contractor for shipment, specifying the date on which the property will be available for shipment. The owner shall also furnish the Contractor with the complete address of the new location to which the property shall be delivered. When making request for shipment, the owner of the property shall furnish a copy of his travel orders as proof of authorization for shipment of his property under this Contract.

BILLS OF LADING: A Government bill of lading will be issued by (Name of Agency) to cover each shipment made under this Contract.

RELEASED VALUE OF PROPERTY: All shipments made under this Contract shall be released to a value not exceeding thirty cents (30c) per pound per article.

BASIS FOR CHARGES: Charges for all of the services performed under this Contract shall be assessed on the weight of the property transported at the rate of per one hundred (100) pounds. The weight of the property upon which the

charges are assessed shall be determined as herein provided.

BASIS OF WEIGHT: (a) The tare weight of each vehicle used in the transportation of household goods and personal effects shall be determined by having it weighed prior to the transportation of each shipment, without the crew thereon, by a certified [fol. 65] weighmaster on a certified scale, and when so weighed, the gasoline tank on each such vehicle at time of weighing shall be full and the vehicle shall contain all blankets, pads, chains, dollies, hand trucks, and other equipment needed in the transportation of such shipment.

(b) After the vehicle has been loaded it shall be weighed, without the crew thereon, prior to delivery of the shipment. This weight shall be considered as the gross weight.

(c) The net weight of the shipment shall be determined by deducting the tare weight from the gross weight.

(d) In the transportation of part loads, the provisions of (a), (b) and (c) shall apply in all respects, except that the gross weight of a vehicle containing one or more part loads may be used as the tare weight of such vehicles as to part loads subsequently loaded thereon.

(e) For the purpose of applying the maximum weight limitations, the weight of the household goods and personal effects of each employee must be identified. If scales are not available at point of origin, at any point en route, or at destination, a constructive weight based on seven (7) pounds per cubic foot of properly loaded van space may be used. Such constructive weight also may be used for a part load when its weight could not be obtained at origin, en route, or at destination, without first unloading it or other part loads being carried in the same vehicle.

(f) All tare and gross weights shall be properly certified to by the person or persons who ascertained such weights.

(g) All vouchers submitted for payment under this Contract, shall be supported by certified scale tickets to cover the actual tare and gross weights. When constructive weights, as provided in subparagraph (e), above, are used, such weights shall be supported by certificates justifying the use of each constructive weight. These certificates shall be submitted with vouchers for payment of transportation charges.

[fol. 66]

PERMITS AND OPERATING AUTHORITY: The Contractor shall secure from the proper official, office, or Government regulatory body all permits or operating authorities necessary for the performance of the services under this Contract.

CARGO INSURANCE: The Contractor shall furnish to General Services Administration certificate or certificates of insurance, satisfactory to it, for cargo insurance (including household goods and personal effects), of not less than $25,000.00, to cover each transportation vehicle used to perform the services under this Contract.

DAMAGE AND INJURY: The Contractor assumes responsibility for all damage or injury to persons or property occasioned through the use and operation of its vehicles by, or the action of, the Contractor, its employees and agents, and the Contractor, at its own expense, shall maintain adequate public liability and property damage insurance during the continuance of this Contract, insuring itself against all claims for injury or damage; also, Workmen's Compensation, and other legally required insurance with respect to its own employees and agents. The Government shall in no event be liable or responsible for damage or injury to any person or property occasioned through the use or operation of any vehicle by, or the action of, the Contractor, its employees and agents, in performing under this Contract.

COMPLIANCE WITH APPLICABLE LAWS: In the performance of this Contract, the Contractor shall

comply with and give all stipulations and representations required by any applicable Federal, State, Municipal or local law or executive order or any applicable rules, orders, regulations or requirements of any Government department or bureau, but nothing herein contained shall be considered as preventing the Contractor from contesting in good faith the validity of such law, rule, order, regulation or requirement or any charge that the Contractor has not complied therewith.

FINANCIAL STATEMENT: The Contractor shall promptly, upon request by the Government, furnish the Government with a current certified statement of its financial condition and such data as the Government may request with respect to its operations in order to determine Contractor's ability to perform under this Contract and its financial responsibility.

[fol. 67]

DURATION OF CONTRACT: The services outlined under this Contract shall be available on the terms, conditions, and specifications herein stated for a period of (time) from the date of the execution of this Contract by the Government.

. . . .

10. LIMITED GOVERNMENT LIABILITY FOR LOSS OR DAMAGE. The Comptroller General of the United States has advised that "when an employee of the United States avails himself of any right he may have acquired under the law to have his household effects transported at Government expense, such right as well as the liability of the Government is limited by the specific provisions of law and regulation authorizing the expenditure of public funds for that purpose. In those cases where the shipment of an employee's household effects at Government expense is authorized and requested by the employee, the Government undertakes such shipment upon the same basis as it would ship its own property, that is, by Government Bill of Lading which carries a lower

rate as well as a limited responsibility for loss or damage on the part of the carrier. This is a standard policy of long standing and since the laws and regulations pertaining to the shipment of household effects of civilian employees contain no provision for indemnifying the employee for loss or damage in excess of the limited liability assumed by the carrier under a Government Bill of Lading, it is incumbent upon the employee to procure private insurance if he is unwilling to assume the same risks with respect to his effects as the Government assumes in shipping its own property." (Comp. Gen. B-92393, dated April 27, 1950). Therefore, TPUS offices receiving requests from civilian agencies for assistance in arranging for a mass movement of household goods or personal effects on Government bills of lading shall advise the agency accordingly.

[fol. 68] ATTACHMENT TO AFFIDAVIT

APPENDIX A

Bureau of the Budget Household Goods Regulations

TPS 7460.1
March 15, 1960

EXECUTIVE OFFICE OF THE PRESIDENT
BUREAU OF THE BUDGET
Washington 25, D. C.

February 20, 1960

CIRCULAR NO. A-37
Transmittal Memorandum No. 4

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Regulations prescribing revised commuted rates of reimbursement for transportation and temporary storage expenses for household goods and personal effects of civilian officers and employees upon transfer of official station within the continental United States (use of Government bills of lading or the commuted rate system for mass movements of employees' household goods)

1. *Purpose.* The regulations prescribed in Bureau of the Budget Circular No. A-37 of December 30, 1957, as last amended by Transmittal Memorandum No. 3 of October 22, 1959, are amended as provided in Attachment A. The purpose of the amendment is to provide for use of Government bills of lading for transportation of household goods, instead of the commuted rate system, for mass movements of household goods transferred between the same two official stations when significant savings will result.

2. *Evaluation.* Arrangements have been made with the General Services Administration (for mass movements involving civilian agencies) and the Department of De-

fense (for mass movements of its civilian employees) to furnish evaluation reports covering the mass movements analyzed from April 1, 1960, through March 31, 1961.

3. *Effective date.* The amendment shall apply to transfers of employees ordered on or after April 1, 1960.

ELMER B. STAATS
Acting Director

Attachment

[fol. 69]

ATTACHMENT A

AMENDMENTS TO REGULATIONS GOVERNING PAYMENT OF TRAVEL AND TRANSPORTATION EXPENSES OF CIVILIAN OFFICERS AND EMPLOYEES OF THE UNITED STATES WHEN TRANSFERRED FROM ONE OFFICIAL STATION TO ANOTHER FOR PERMANENT DUTY

1. Title II, "Transportation of household goods and personal effects within the continental United States," is amended to read:

Section 12. *Determination of weight.* The obligation of the Government to pay for costs of transporting employees' household goods and personal effects shall be limited to payments for 7,000 pounds *net* weight for employees with immediate families and to 2,500 pounds *net* weight for employees without immediate families. (See section 6.) When household goods and personal effects are transported *uncrated* their actual weight, including containers and packing materials, shall be considered as the net weight. When the household goods and personal effects are *crated* the net weight shall be computed at 80% of the gross weight.

Section 13. *Commuted rate system.*

(a) Under the commuted rate system, employees make their own arrangements for transporting their

household goods and personal effects. They pay the carriers and are reimbursed by the Government for costs of transportation, packing, crating, drayage and unpacking at rates per hundred pounds specified in Schedule A of these regulations. In addition, employees are reimbursed for costs of temporary storage at the commuted rates specified in Schedule A for temporary storage.

(b) The commuted rate system shall be used when (1) an individual employee is transferred, (2) a group of employees is transferred between the same official stations but the aggregate estimated weight of their household goods and personal effects is less than 50,000 pounds, and (3) a group of employees is to be transferred between the same official sta-
[fol. 70] tions with household goods and personal effects estimated to aggregate 50,000 pounds or more but the estimated savings in transportation costs under the GBL method are not sufficient to justify its use. (See section 14(a).)

(c) As a general guide in estimating the weight of household goods to be moved, for the purposes of sections 13(a) and (g) and 14(a) through (d), the number of rooms in which the property is located (not including bathrooms, closets, and reception hallways) may be multiplied by 1,000.

(d) When the commuted rate system is used, the amount to be paid to the employee for transportation and related services is computed by multiplying the number of hundreds of pounds shipped (as shown on original bills of lading or other evidence of weight shipped) by the applicable rate per hundred pounds for the distance shipped as shown in Schedule A. (Subject to the maximum weight allowances stated in section 12.) The distance shall be determined in accordance with household goods mileage guides filed with the Interstate Commerce Commission. If the rate is not shown in Schedule A for the exact mileage, the rate shown for the next greater distance shall apply. If the weight transported is less than the minimum weight

charged, the reimbursement shall be at the minimum weight charged, instead of the actual weight transported. The minimum weight charged by household goods carriers is 500 pounds, except that the minimum weight shall be 1,000 pounds for shipments between the following points if the point of origin or destination is more than five miles from specified highways: Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming, any point within a 25-mile radius of El Paso, Texas.

(e) When the commuted rate system is used for temporary storage, the amount to be paid to the employee shall be determined in accordance with the table of storage allowances in Schedule A: *Provided*, That the amount of reimbursement shall not exceed the amount actually paid for the storage.

[fol. 71]

(f) In support of claims for reimbursement under the commuted rate system employees shall submit (1) the original or a certified copy of the receipted warehouse bill for temporary storage and (2) in support of transportation, the original bills of lading of certified copies, or, if bills of lading are not available, other evidence showing point of origin, destination, and weight. If no adequate scale is available at point of origin, at any point en route, or at destination, a constructive weight; based on seven pounds per cubic foot of properly loaded van space, may be used. Such constructive weight also may be used for a part load when its weight could not be obtained at origin, en route, or at destination, without first unloading it or other part loads being carried in the same vehicle.

(g) Advances of funds may be made to employees up to the estimated amount of the commuted payment for the cost of transportation and temporary storage of their household goods and personal effects, under the procedures and policies prescribed under the Standardized Government Travel Regulations

(Bureau of the Budget Circular No. A-7, Revised) with respect to advances of funds for travel of employees. In requesting an advance of funds, the employee shall submit a written statement designating (1) the points of origin and destination, (2) the estimated weight of household goods and personal effects to be shipped (computed as provided in section 13(c)), and (3) any anticipated temporary storage (not to exceed two months at Government expense).

Section 14. *Government bills of lading.*

(a) When Government bills of lading (GBL's) are used in lieu of the commuted rate system, the Government assumes responsibility for dealings with carriers, including negotiating rates, selecting carriers, and auditing and paying transportation vouchers. Since these activities involve additional administrative expense for the Government, the GBL method shall be used only when actual transportation charges will be substantially below the amounts which the Government would be required to pay under the commuted rate system. Accordingly, the policy is as follows: (1) the GBL method will not
[fol. 72] be used when an individual employee or a group of employees with aggregate household goods estimated to weigh less than 50,000 pounds is being moved, (2) when a group of employees with aggregate household goods estimated to weigh 50,000 pounds or more is to be moved between the same two points during a period of not more than one year, an effort shall be made to obtain favorable transportation rates under the GBL method (an agency may, at its discretion seek favorable rates for such movements scheduled to take place during a period of more than one year if it believes there is reasonable opportunity for substantial savings), (3) the GBL method shall be used for such movements when the amounts which the Government would pay under the commuted rate system would exceed by ten percent or more the cost for trans-

portation services of satisfactory quality under the GBL method, (4) the GBL method also may be used when the cost difference is less than ten percent if the dollar amount of the savings is so substantial (due to weights and distances of shipments) that use of a GBL is deemed by the agency to be justified, and (5) the GBL method shall not be used for such movements if the criteria described in (3) and (4) are not met.

(b) When a group of employees of a civilian agency with household goods estimated to weigh 50,000 pounds or more is to be moved between the same official stations over a period of one year or less (or over a longer period if the agency believes there is opportunity for substantial savings), the agency shall furnish the General Services Administration with such specific information as the GSA may require in order to seek favorable transportation rates.

(c) When a civilian agency has advised the GSA concerning a mass movement of household goods, the GSA shall attempt to arrange favorable rates and shall inform the agency of the results of such efforts. GSA may, by agreement, delegate its responsibility to the agency concerned.

(d) After obtaining the results of GSA's efforts to arrange favorable rates, together with GSA's advice as to whether any of the rates offered should be accepted, a civilian agency shall apply the criteria described in section 14(a) in order to determine whether to use the commuted rate system or to issue Government bills of lading. The agency shall be responsible for issuing Government bills of lading, [fol. 73] paying the carriers' bills and performing all other functions incident to shipments of property on Government bills of lading, unless by mutual agreement, GSA performs these functions.

(e) When Government bills of lading are used, the weight of the household goods and personal effects of each employee is to be identified for the purpose of applying the maximum weight limitations. (See

section 12.) If no adequate scale is available at point of origin, at any point en route, or at destination, a constructive weight, based on seven pounds per cubic foot of properly loaded van space, may be used. Such constructive weight also may be used for a part load when its weight could not be obtained at origin, en route, or at destination, without first unloading it or other part loads being carried in the same vehicle. When the weight of an employee's household goods and personal effects (as determined under the preceding sentence) exceeds the maximum weight limitation, the total quantity may be shipped on a Government bill of lading but the employee shall reimburse the Government for the cost of transportation and temporary storage of the excess weight, computed from the total charges according to the ratio of excess weight to the total weight of the shipment.

(f) The above procedure for civilian agencies also is applicable to civilian employees of the Department of Defense except that the Department of Defense, rather than the General Services Administration, is responsible for attempting to arrange favorable rates with respect to mass movements of its employees.

2. Title X, section 34(a)(2), is amended as follows:

The phrase "section 15 of title II" is changed to "section 13(g) of title II."

3. Schedule A is amended as follows:

(a) Section 1, Table 3, first paragraph, is amended by changing "section 12(a)" to "section 13(d)."

(b) Section 2, first paragraph, is amended by changing "section 12(b)" to "section 13(e)."

[fol. 74] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION

[Title omitted]

PLAINTIFF'S MORE DEFINITE STATEMENT OF THE ISSUE INVOLVED—filed May 17, 1961

Comes now the plaintiff, United States of America, and in accordance with the Court's order of May 5, 1961, directing that the plaintiff "specify the type of transportation concerning which it charges the defendant is seeking to exercise jurisdiction", respectfully shows:

1. This action was filed on March 9, 1961, and in the complaint it was the purpose of the plaintiff to allege that the Commission asserted the power to regulate the rates for all shipments of property by the United States, including not only the property owned by the United States but likewise the household goods and personal effects of personnel of the United States. At the time the complaint was drawn the only general order or directive of the Commission of which the plaintiff had knowledge dealing with its power over such rates was a directive addressed to All Class A and Class B Motor Carriers of property dated March 11, 1954. This directive was by its terms based on a letter of the Attorney General of Georgia to an official of the Commission dated March 8, 1954. Copies of these documents are attached as [fol. 75] Exhibits A and B. It will be noted that in this general order or directive the Commission clearly and positively asserts that it has the power to regulate the rates for the shipment of all property by the United States including property owned by it. To the plaintiff's best knowledge and belief this general directive of the Commission has never been revoked or modified in any way by a general order or directive of the same dignity. However, on May 4, 1961, attorneys for the plaintiff were given a letter written by the Attorney General of Georgia

to the Commission on May 29, 1958, in which the Attorney General advised the Commission that under the decision of the Supreme Court in *California Commission* v. *United States*, 355 U. S. 534 (decided March 3, 1958), the Commission no longer had the power to regulate the rates for the shipment of property owned by the United States for the account of the United States Armed Forces. In this letter the Attorney General stated that the question whether or not the Commission had the power to regulate the rates for the transportation of private property of individuals employed by the Armed Forces was an open one. A copy of this letter is attached as Exhibit C. A short time after May 4, 1961, the attorneys for the United States came into possession of a letter written by the Director, Transportation Rates Division of the Commission, to Shippers Express, Inc., of Atlanta, on August 5, 1958. In this letter it was stated that the Commission no longer had the power to regulate the rates for the shipment of property owned by the United States. A copy of this letter is attached as Exhibit D. Since this action was commenced it appears that officials of the Commission have stated to the public press, and the counsel of the Commission has stated in open court, that the Commission no longer asserts the power to regulate the rates for the shipment of property owned by the United States but simply asserts the power to regulate the rates for the shipment of household goods and personal effects of personnel of the United States. In reli- [fol. 76] ance on the letters and statements above mentioned the United States accepts as a fact that the Commission no longer asserts the power to regulate the rates for shipment of property owned by the United States, and does not now and will not in the future attempt to regulate such rates. Therefore the sole issue before the Court may be stated as follows:

ISSUE: Are the pertinent sections of the Georgia statute unconstitutional insofar as they confer upon the Public Service Commission of Georgia the power to regulate the rates in contracts entered into by the United States with carriers in Georgia for the carriage of the household goods and personal effects of personnel of the

United States when the contract is the contract of the United States and the United States assumes the sole responsibility of paying the carrier for the carriage by the terms of the contract?

/s/ Charles D. Read, Jr.
United States Attorney

/s/ E. Riggs McConnell
Attorney, Department of Justice
Washington 25, D. C.

CERTIFICATE OF SERVICE
(omitted in printing)

[fol. 77] EXHIBIT A TO PLAINTIFF'S MOBL
DEFINITE STATEMENT, ETC.

GEORGIA PUBLIC SERVICE COMMISSION
Atlanta

March 11, 1954

TO ALL CLASS "A" AND CLASS "B" MOTOR CARRIERS OF PROPERTY:

For some time the Georgia Public Service Commission has been experiencing difficulty with the regulation of charges made by motor common carriers for the transportation of property for account of various agencies of the United States Government. Many reports have been made to us concerning the procedure whereby the Government requests bids on given movements and the carriers quote substantially reduced transportation charges which bear little or no relation to the rates charged the general public.

It has been contended by some of the motor carriers and by transportation officials of some of the Government agencies that this Commission has no jurisdiction over the rates, charges and services of motor carriers performing for-hire transportation for the United States Government when such transportation is over federally—aided highways. The basis for this contention is a decision of the Comptroller General of the United States handed down in November, 1935, in a proceeding involving a particular situation in the State of Arizona.

In order that this Commission might be properly advised as to its jurisdiction over this type of transportation, we requested the Attorney General of the State of Georgia to render a formal opinion as to the effect of this Arizona ruling on the regulatory powers of this Commission. We have now received the opinion of the Attorney General, a copy of which is attached hereto for your information.

It will be noted that, in the opinion of the Attorney General of the State of Georgia, the Georgia Public Service Commission has *complete* authority over intrastate motor carrier transportation for account of the United

States Government so long as that transportation is performed by other than Government-owned carriers.

Accordingly, this is to advise that all motor carriers certificated by the Georgia Public Service Commission to transport property between points in the State of Georgia will be required to charge for such transportation the rates and charges approved or prescribed by this Commission regardless of the company or agency for which the transportation is performed. Carriers found violating this provision will have issued against them a Rule [fol. 78] Nisi to show cause why their Certificates of Public Convenience and Necessity should not be cancelled for failure to comply with the rules of this Commission.

MATT L. McWHORTER
Chairman

Copy to:

All Interested Parties

[fol. 79] EXHIBIT 3 TO PLAINTIFF'S MORE DEFINITE STATEMENT, ETC.

THE DEPARTMENT OF LAW
STATE OF GEORGIA
Atlanta

March 8, 1954

Mr. Dave O. Benson, Director
Transportation Rates Division
Georgia Public Service Commission
Atlanta National Building
Atlanta, Georgia

Dear Mr. Benson:

I duly received your letter of February 24 and the request of yourself and Chairman McWhorter of the Georgia Public Service Commission for a formal interpretation of the effect of the ruling of the Comptroller General of the United States, contained in Volume 15, Page 427 of the Decisions of the Comptroller General of the United States, on the jurisdiction of the Georgia Public Service Commission over the rates, charges and services of motor carriers performing for hire transportation service for the United States Government between points within the State of Georgia.

The opinion of the Comptroller General rendered in November, 1935; is to the effect that a State may not by the imposition of licenses on truck lines interfere with the right of the United States to operate over the public roads either by means of a Government truck or a contractor engaged by the Government for the exclusive purpose of transporting Federal supplies, and a contractor may not be excused from performance on the grounds that the State Commission has refused to grant him a license.

It was therein stated that the United States has a right to transport its supplies over the public roads in Arizona and particularly over the roads which the Federal Government assisted in constructing, either by means of a Gov

ernment-owned truck or by the employment of such trucking concern as may be satisfactory to the United States. The State of Arizona may not interfere therewith by denying to the United States the right to operate over the public roads by means of a Government truck or a contractor engaged by the Government for the exclusive purpose of transporting Federal supplies.

In the opinion of the Comptroller General, there was cited the case of *Johnson* v. *State of Ohio*, 254 U.S. 251, and the case of *Western Union Telegraph Company* v. *Pendleton*, 122 U.S. 347.

[fol. 80] In the Johnson case, it was held that a law of a State penalizing those who operate motor trucks on highways without having obtained licenses based on examinations of competency and payment of a fee, cannot constitutionally apply to an employee of the Post Office Department while engaged in driving a Government motor truck over a post road in the performance of his official duty. (Citing *Ohio* v. *Thomas*, 173 U.S. 276, 283)

In the case of *Ohio* v. *Thomas*, 173 U.S. 276-283, it was held that the police power of the State does not extend to the United States, its property or transactions and that Federal property and transactions are immune from State regulations and conflicting State statutes are invalid under the Supremacy Clause of the Constitution of the United States.

The Supremacy Clause of the Constitution of the United States, same being Article 6, Clause 2, provides: "This Constitution and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

Clearly, the opinion of the Comptroller General of the United States is correct insofar as the immunity of the Federal Government is concerned. However, there is con-

siderable doubt as to whether that part of the opinion relating to contractors transporting Government goods under contracts with the Government is correct. The Supreme Court opinions cited by the Comptroller General do not support this conclusion. I do not locate any Georgia decisions which deal specifically with this point. There was a subsequent opinion of the Supreme Court of the United States, that of *Pennsylvania Dairies* v. *Milk Control Board*, 318 U.S. 261, that supports the view that the immunity under the Supremacy Clause would not be extended to those furnishing supplies to the Government.

It would be our opinion that the Georgia Public Service Commission would have complete authority over contractors performing services for the Government, that is to regulate their rates, charges, services, etc., but that they would have no authority over Government-owned carriers engaged in work for the United States Government.

[fol. 81] We trust that this satisfactorily answers your inquiry, but if further information is desired, we will be glad to furnish same upon request.

Very truly yours,

/s/

EUGENE COOK,
Attorney General, State of Georgia

/s/

DUDLEY COOK,
Deputy Assistant Attorney General
for Georgia Public Service
Commission.

[fol. 82] EXHIBIT C TO PLAINTIFF'S MORE DEFINITE STATEMENT, ETC.

May 29, 1958

Honorable Matt L. McWhorter, Chairman
Georgia Public Service Commission
244 Washington Street, S. W.
Atlanta, Georgia

Re: *Public Utilities Commission* v. *United States*, 2L. Ed. 2d 470.

Dear Mr. McWhorter:

I am pleased to acknowledge your request as to whether the decision of the Supreme Court of the United States in the above captioned case eliminates from the jurisdiction of your Commission regulation of Georgia intrastate transportation rates of the railroads and common and contract motor carriers on movements for account of the United States Government and its various departments and agencies.

On March 3, 1958, the Court struck down a California statute which required the approval by the state's Public Utilities Commission of rates charged by common carriers for transportation of "property of the Armed Forces". The statute provided that "The commission may permit common carriers to transport property at *reduced rates for the United States* . . . to such extent and subject to such conditions as it may consider just and reasonable." There is a large volume of military traffic in California, and the federal government negotiates special rates with carriers which are substantially equal to or lower than those for regular commercial shipments.

On the merits, the Court found that federal policy, as expressed in statutes and military regulations, provides for federal officers negotiating rates for shipment with discretion to determine when the existing rates will be accepted and when negotiations will be undertaken for lower rates. The California statute would, said the Court,

[fol. 83] permit exercise of this discretion only if the state commission approved, and this amounts to a prohibition on the federal government. "Here the conflict between the federal policy of negotiated rates and the state policy of regulation of negotiated rates seems to us to be clear", the Court declared pointing out that state regulation might involve the Services in "an administrative morass" that would seriously interfere with national defense.

There is some question as to whether this opinion is limited to the transpotration of "property of the Armed Forces". Certainly the decision itself could only be authority as to government owned property. Nevertheless, the dicta of the case could be construed either way with respect to contracts negotiated by the federal government for the transportation of private property of individuals employed by the Armed Forces. For example the opinion itself uses the words "government property" or "United States property" in three separate places. It makes no reference to property other than government owned property. However, in reference to the statement concerning conflict between federal policy of negotiated rates and state regulation, the opinion could be construed to cover any federal negotiated rate including contracts by the federal government for the transportation of private property of individuals employed by the Armed Forces.

One basis of the California case, the possible "administrative morass", does not exist in the State of Georgia. There was no provision in the California Code or the regulations for the making of a "freight of all kinds" rate which is the practice of the federal government, i.e., unless the government could negotiate rates for each shipment, the shipments would be delayed for commission action unless shipped under the established rates. It is my understanding that your Commission permits a "freight of all kinds" rate; therefore, no so-called "administrative morass" would result from the exercise of your Commission's jurisdiction.

In conclusion, I am of the opinion that the decision in *Public Utilities Commission* v. *United States*, 2 L. Ed. 2d 470 (March 3, 1958), eliminates from the jurisdiction of your Commission regulation of Georgia intrastate [fol. 84] transportation rates of the railroads and common and contract motor carriers on movements of government owned property for account of the United States Armed Forces. As to contracts negotiated by the federal government for the transportation of private property of individuals employed by the Armed Forces, the question remains unanswered, and I am unable to give an opinion as to just what would be the ruling of the Supreme Court of the United States.

With kindest regards and best wishes, I am

Sincerely yours,

EUGENE COOK
Attorney General

E C i n b Mall

[fol. 85] EXHIBIT D TO PLAINTIFF'S MORE DEFINITE STATEMENT, ETC.

GEORGIA PUBLIC SERVICE COMMISSION
244 Washington Street, S. W.
Atlanta 3, Georgia

August 5, 1958

File 6-566
TD-3051

Shippers Express, Inc.
5 Haynes Street, S. W.
Atlanta, Georgia

Gentlemen:

This will acknowledge receipt of copy of Shippers Express, Inc. Tender No. Atla.MX-2 of July 21, 1958 quoting to the Department of Defense rate of 47 cents per 100 pounds, minimum weight 20,000 pounds (with excess over such minimum to be transported at 39 cents per 100 pounds) applicable on shipments of machinery, NOIBN and aircraft engines between Warner Robins and 15 miles thereof on the one hand, and Atlanta and 15 miles thereof on the other hand.

This Commission has been advised by ruling from the Attorney General of the State of Georgia that the recent decision of the United States Supreme Court in the California case (Public Utilities Commission v. United States, 2 L. Ed. 2nd 470) has removed the jurisdiction of this Commission over *rates* charged for the transportation of property owned by the United States Government moving for account of the United States Government.

Accordingly, this Commission will no longer specifically approve or reject any rate tender made to the United States Government for the transportation of property owned by the United States Government. Your Rate

Tender No. Atla. MX-2 is being placed in the Commission's file as information only.

Very truly yours,

/s/ David O. Benson, Director
Transportation Rates Division

DOB:em

CC:

Mr. W. A. Green, Manager, Rates Division, Georgia Motor Trucking Association, Inc., 328 Ponce de Leon Avenue, N. E., Atlanta 8, Ga.

Mr. R. E. Boyle, Jr., Chairman, Southern Freight Association, 101 Marietta Street, Atlanta 3, Georgia

Please advise the members of your Associations of this change in requirements as to Section 22 Type Quotations on Georgia intrastate traffic. No approval by the Commission will be required as to the level of the rates quoted in future such tenders, but copy of all such tenders submitted will be placed in the Commission's files as information to all concerned.

D.O.B.

CC:

All Interested Parties

[fol. 86] [File endorsement omitted]

IN THE
UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

[Title omitted]

ANSWER OF THE DEFENDANT, GEORGIA PUBLIC SERVICE COMMISSION—filed May 31, 1961

Now comes the GEORGIA PUBLIC SERVICE COMMISSION and answering, says:

FIRST DEFENSE

The complaint of the United States of America fails to state a claim upon which relief may be granted.

SECOND DEFENSE

—1—

The defendant does not contest the jurisdiction of this Court to decide the controversy brought before it by the plaintiff's complaint.

—2—

The allegations of paragraph 2 insofar as they apply to the shipment of the household goods of United States servicemen and civilian personnel by commercial carrier within the State of Georgia are admitted.

—3—

In answer to paragraph 3 of the plaintiff's complaint the defendant for want of information is unable either [fol. 87] to admit or deny that the Federal Government since its creation and the establishment of the Armed Forces of the United States has been in the practice of negotiating with carriers through officers of the United States for the movement of the household goods of military personnel.

Further answering the allegations of paragraph 3 the defendant is further unable to admit or deny that Section 22 of the Interstate Commerce Commission Act constituted an express recognition of such "a long established practice" with regard to individual members of the Armed Forces of the United States.

Further answering paragraph 3 of plaintiff's complaint the defendant for want of information is unable to admit or deny the truth of plaintiff's assertion that it has been "generally assumed" that the officers of the United States are empowered to negotiate rates for the intrastate shipment of the household goods of individual military and civilian personnel of the United States without regard to state statutes regulating the rates charged by carriers for the transportation of such shipments.

Further answering paragraph 3 of plaintiff's complaint, the defendant admits that the Federal Property and Administrative Services Act of 1949, Public Law 152, 81st Congress, 1st Session, Sections 201 and 202, 63 Statutes, at page 377, makes no reference to intrastate shipments of property by the Federal Government as distinguished from such shipments in intrastate commerce and further, that the regulations of the various federal departments and agencies with respect to the negotiation of rates for the carriage of household goods of individual members of the Armed Services of the United States and civilian employees of the United States make no express reference to intrastate shipment of such property as distinguished from the shipment of such property in interstae commerce.

—4—

Answering paragraph 4 of plaintiff's complaint, the Georgia Public Service Commission, asserts that it has [fol. 88] never conceded that the Georgia statutory provisions delegating authority to it to regulate the rates which carriers may charge for the intrastate transportation of property do not extend to the rates charged for the transportation of household goods of military and civilian personnel of the United States in intrastate commerce within the State of Georgia. The Georgia Public

Service Commission ceased asserting authority to regulate the rates charged for the intrastate carriage of property owned by the Federal Government in 1958 after being officially advised by the Attorney General of Georgia by letter dated 29 May, 1958, that it lacked authority to regulate the rates charged by intrastate carriers for shipments of military property of the United States, and asserting that its authority to regulate shipments of federally owned property in general was dubious.

Further answering paragraph 4 of plaintiff's complaint the defendant denies that for many years it did not regulate the rates for shipments by the United States between points within the State.

The defendant admits the other allegations contained in paragraph 4.

—5—

The defendant admits the truth of the allegations of paragraph 5 insofar as it relates to the intrastate shipment within the State of Georgia of the household goods of military and civilian personnel of the United States.

—6—

The defendant denies the allegations of paragraph 6 and alleges that Sections 93-304, 93-310, 93-403, and 93-407, Georgia Code Annotated, and Sections 68-613 and 68-614, Georgia Code Annotated, insofar as they vest authority in the Georgia Public Service Commission to regulate [fol. 89] the rates to be charged for the carriage of the household goods of civilian and military personnel of the Federal Government in intrastate commerce within the State of Georgia are not contrary to the Federal Constitution.

—7—

The defendant admits that there is a real controversy between the United States and itself as to the constitutional authority of the defendant in pursuance of the Georgia statutory provisions above cited to regulate the

rates which may be charged by carriers for the intrastate carriage of the household goods of the United States military and civilian personnel within the State of Georgia.

/s/ Eugene Cook
The Attorney General

/s/ Ariel V. Conlin
Assistant Attorney General

/s/ Sheldon C. Dorough
Deputy Assistant Attorney General

[fol. 90] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

[Title omitted]

CROSS-MOTION FOR SUMMARY JUDGMENT—filed September 6, 1961

Now comes the GEORGIA PUBLIC SERVICE COMMISSION, defendant, and shows that, from the pleadings and affidavits filed in this case, it appears that there is no issue of material fact in this case and that the sole question between the parties is a matter of law.

Now, therefore, on the basis of said pleadings and affidavits already filed in this case, the defendant, Georgia Public Service Commission, moves this Court to enter a summary judgment in its favor pursuant to Rule 56 (a) of the Rules of Civil Procedure.

/s/ Eugene Cook
The Attorney General

/s/ Ariel V. Conlin
Assistant Attorney General

/s/ Sheldon C. Dorough
Deputy Assistant Attorney General

• • • •

[fol. 91] IN
UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

No. 7528 Civil Action

UNITED STATES OF AMERICA, PLAINTIFF

versus

THE GEORGIA PUBLIC SERVICE COMMISSION,
DEFENDANT

OPINION AND JUDGMENT ON MOTION FOR SUMMARY
JUDGMENT—October 2, 1961

The United States sues to prevent the Georgia Public Service Commission from regulating tariffs charged by carriers within the state of Georgia for the intrastate shipment of household goods of government employees under contracts made with the carriers by government agencies.

The state Commission is under the duty to prevent discriminatory rates for intrastate shipments.[1] It conceives it to be its duty to prevent carriers from contracting with military or other federal government agencies to carry household goods of individual employees of the United States, when such shipments are wholly within the state of Georgia, at less than the published tariffs.

No issue is presented touching on the right of the Commission to regulate the rates charged by Georgia carriers for the carriage of strictly governmental property. The Commission concedes that this issue has been foreclosed in favor of the United States by California Public Service Commission v. United States, 355 U. S. 534.

[fol. 92] The United States contends that since the carriage of the household goods of its employees, where

[1] See Georgia Code Ann. §§ 93-309, 93.310 and 93.407, as to railroad transportation. See Georgia Code Ann. §§ 68-613, 68-614 and 68-9909, as to motor carrier transportation.

authorized by law at government expense. In a proper exercise of the constitutional power of the government to engage in the enterprise, it makes no difference whether the carriage is of government property or is of personal property, for the moving of which the government is liable. The policy of the federal government to arrange for carriage services, whether by bid or negotiation, at the cheapest responsible prices, the government says, is the same in either case.

The Georgia Commission seeks to distinguish the facts here from those which resulted in the Supreme Court's adverse decision in the California case, saying that the Court is here dealing with a fact situation that calls for application of the principles laid down by the Supreme Court in the case of Penn Dairies, Inc., et al. v. Milk Control Commission of Pennsylvania, 318 U.S. 261.

The case is not as simple one to resolve. All parties agree that under the supremacy clause of the Federal Constitution the federal government has the power, if it elects to exercise it, to prevent any interference by way of state regulatory schemes upon the proper exercise of activities constitutionally engaged in by the federal government.

> "It is of the very essence of supremacy to remove all obstacles to its action within its own sphere, and so to modify every power vested in subordinate governments, as to exempt its own operations from their own influence." M'Culloch v. Maryland, 4 Wheat. 316, 427.

It is also clear that short of state taxation of the national government or state regulation of the performance of federal officials and agencies of governmental functions, Ohio v. Thomas, 173 U.S. 276; Johnson v. Maryland, 254 U.S. 51; Hunt v. United States, 278 U.S. 96; Arizona v. California, 283 U.S. 423, the states may, in the absence of congressional enactment, adopt nondiscriminatory taxing statutes, and nondiscriminatory regu-
[fol. 93] lations under the state's police power that may to some degree affect either the cost of the government's operation within the state or increase difficulties touching

on such operation, Alabama v. King & Boozer, 314 U.S. 1; United States v. Baltimore & Annapolis RR Co., 308 U.S. 525; Penn Dairies, Inc. et al. v. Milk Control Commission, supra.

The question we have here to decide, therefore, is whether the Georgia laws place a direct prohibition on the agencies of the federal government, or, if not, whether the federal laws authorizing the transportation in question impliedly prohibit inconsistent regulations.

The state's main reliance is on the Penn Dairies case, supra. There, notwithstanding an existing federal statute authorizing the military services to purchase by bid or negotiated contract the articles of food and other supplies needed for the armed services, the Supreme Court held that a contract made by a Pennsylvania dairyman for supplying the military forces in Pennsylvania at prices less than the established price of the Pennsylvania Milk Control Commission, could validly be treated by the Pennsylvania Commission as a basis for revoking the license of the dairy. The Court dealt with the matter in terms of the legality of the regulatory scheme of the Milk Control Commission when in conflict with the federal scheme of authorizing purchases at the lowest available price. The Court said:

> "The dairy's answer to the citation challenged the constitutional authority of the state to regulate prices charged to the United States."

The Court answered this question by saying:

> "Here the state regulation imposes no prohibition on the national government or its officers. They may purchase milk from whom and at what price they will, without incurring any penalty. See the opinion below, 148 Pa. Super. 270 71. As in the case of state taxation of the seller, the government is affected only as the state's regulation may increase the price which the government must pay for milk. By the exercise of control over the seller, the regulation imposes or may impose an increased economic burden on the [fol. 94] government, for it may be assumed that the regulation if enforcible and enforced will increase the

price of the milk purchased for consumption in Pennsylvania, unless the government is able to procure a supply from without the state, see Baldwin v. Seelig, 294 U.S. 511. But in this burden, if Congress has not acted to forbid it, we can find no different or greater impairment of federal authority than in the tax on sales to a government contractor sustained in Alabama v. King & Boozer, supra; or the state regulation of the operations of a trucking company in performing its contract with the government to transport workers employed on a Public Works Administration project, upheld in Baltimore & Annapolis R. Co. v. Lichtenberg, supra; or the local building regulations applied to a contractor engaged in constructing a postoffice building for the government, sustained in Stewart & Co. v. Sadrakula, 309 U.S. 94, 318 U.S. 261, 270.

The record discloses that many state Public Service Commissions assumed from the language and decision of the Penn Dairies case that they were thus free to regulate the rates to be charged the government uniformly with those to be charged with other shippers for intrastate shipments of government property. The attitude on the part of the California Public Service Commission produced California Public Service Commission v. United States, 355 U.S. 534. The California statute, in effect, provided that its Commission should make uniform rates and see to their application without discrimination. It had a special provision, however, favorable to the United States. It provided that upon application by the United States the Commission had the power to authorize variations from the approved tariffs. Objecting to the necessity of applying in each case for the privilege of negotiating a freight rate for the carriage of the many military shipments within the state, the United States brought a suit before a statutory three-judge court in California to enjoin the interference by the Commission with the government's negotiation of rates with carriers as might be agreed upon. All of the evidence dealt with in that case touched upon the transportation of government property. Much of the evidence demonstrated the need for unfet-

tered handling of many of the important and some secret cargoes needed by the military forces.

[fol. 95] The federal statutes which established the policy of the United States (10 U.S.C.A. § 2301-2314) as implemented by regulations were stated by the Supreme Court to "sanction the policy of negotiating rates for shipment of federal property and entrust the procurement officers with the discretion to determine when existing rates will be accepted and when negotiation for lower rates will be undertaken." 355 U.S. 534, 543. The Court then said:

> "It also seems clear that under Section 530 of the California Public Utilities Code this discretion of the federal officers may be exercised and reduced rates used only if the Commission approves. The question is whether California may impose this restraint or control on federal transportation procurement."

The Court answered this question in the negative, and distinguished Penn Dairies on the ground that:

> "There the question, much mooted, was whether the federal policy conflicted with the state policy fixing the price of milk which the United States purchased. The Court concluded that the state regulation 'imposes no prohibition on the national government or its officers.' Id. at 270. Here, however, the state places a prohibition on the federal government. Here the conflict between the federal policy of negotiated rates and the state policy of regulation of negotiated rates seems to us to be clear."

Our task then is twofold. First, we must determine the factual basis for the distinction drawn in the California case between that case and Penn Dairies. Second, we must decide which of these two cases more closely parallels the one before us for decision.

The state of Georgia argues that the procedural plan of the California law which put the burden on the United States to apply for special treatment was a distinguishing feature, since it is apparent that under the Pennsylvania law there was an absolute prohibition against the sale

of milk at less than the established price and the United States was not named or in any way singled out. The state contends that when the Supreme Court, in the California case, called attention to the fact that the Pennsylvania regulation "imposes no prohibition on the national [fol. 96] government or its officers" it sought to point out this procedural matter, since the California law did impose on the national government the need to apply for an exemption if it wanted one. This, it seems to us, is clearly untenable. Certainly there is less of a prohibition on the national government where the state says it may negotiate contracts if its requests and obtains permission to do so, than where a state, like Pennsylvania and like Georgia, flatly says it may not negotiate at all.

In the California case, the Court noted that:

> "... the Public Utilities Code provides penalties for violations of its provisions and orders issued thereunder. 2107, 2112. These penalties are applicable not only to the carrier but to shippers as well. California Public Utilities Code, 2112. As stated by the District Court: 'If a United States officer were to negotiate with a carrier for "reduced rates" without permitting the defendant to determine whether it "considered" the conditions of the contract "just and reasonable", he could be thrown into the county jail.' 141 F. Supp. at 186."

In Penn Dairies, on the other hand, the Court expressly stated that, "Here the state regulation imposes no prohibition on the national government or its officers. They may purchase milk from whom and at what price they will, without incurring any penalty." 318 U.S. at 270. The basis for this statement completely escapes us. An examination of the Pennsylvania Milk Control Act reveals that penalties can be imposed on "any person" who "buys or receives" or "offers to buy or receive" milk at other than the approved prices. (31 Pa. Stat. 700j-807).

In view of the fact that both the California law and the Pennsylvania law expressly provided sanctions against shippers who negotiated contracts other than as provided for by the regulatory agency, we are just not able to

conclude that the Supreme Court, in the California case, found any distinguishing characteristic here. Moreover, the Courts which have followed the California case in striking down state regulatory legislation in the field of transportation have not even mentioned the penalty issue in reaching their decisions. See Hughes Transportation, [fol. 97] Inc. v. United States (Court of Claims 1958), 168 F. Supp. 219, cert. den., (1959); 359 U.S. 968 [Kentucky Statute]; Union Transfer Co. v. United States (Court of Claims 1958), 168 F. Supp. 217, cert. den., (1959) [Nebraska Statute]; United States v. Pennsylvania Public Utility Commission, (1958), 393 Pa. 143 A. (2d) 341, cert. den., (1958), 358 U.S. 884 [Pennsylvania Statute]; Railroad Commission of Texas v. United States (Tex. Sup. Ct. 1958), 317 S.W. 2d 927, [Texas Statute]; United States v. Pentecost, Chairman Tennessee Public Service Commission, rule 7844 Chancery part 2, Nashville, Tennessee [Tennessee Statute]. See also Benton Rapid Express, Inc. v. United States (Ct. Cl. 1959) 171 F. Supp. 868, 872 [Georgia Statute]; Alabama Highway Express, Inc. v. United States, (Ct. Cl. 1959), 175 F. Supp. 143, 146 [Alabama Statute]; United States of America v. Carter, et al, 121 So. 2d 437.

In light of the foregoing analysis, we cannot say that the provisions for penalties in the Georgia statutes (Ga. Code Ann. § 68-9909) compels us to follow the California case here.

Finally, the state comments on the distinction between the need for the right to negotiate for the shipment of strictly military goods (the issue in the California case) and the need for the right to negotiate for the purchase of milk (the issue in Penn Dairies) or the shipment of household goods (the issue in the instant case). Since there are no other significant factual distinctions between California and Penn Dairies, we can only conclude that the difference in the character of the commodities dealt with was the element which the Supreme Court thought justified its departure in the California case from the rule previously followed in Penn Dairies. The following language from the opinion in the California case is revealing:

"The seriousness of the impact of California's regulation on the action of federal procurement officials is dramatically shown by this record.

"It is the practice of the Government not only to negotiate separate rates which vary from the class or 'paper rate' but also to negotiate a 'freight all [fol. 98] kinds' rate which will cover hundreds of diverse items for the supply of a division of the Army or for a vessel that are needed at one place at one particular time. There is no provision in the California Code or the regulations for the making of such shipments. The findings are that if the Code is applied here, this type of arrangement would be abol[illegible]:

> 'This would make it necessary for the shipping officers to classify the hundreds and thousands of different items used in military operations, to segregate such items in accordance with published tariffs and classifications, to rearrange the boxing and crating of such items in order to meet the classifications and requirements of commercial traffic and fill out voluminous documents. This additional process could cause delays as high as thirteen hours in the shipment of one truckload or carload. In many situations a delay of this sort would seriously hamper or disrupt the military mission for which the shipment was made.'

"Moreover, no rates exist for much of the military traffic, which means that, unless the United States can negotiate rates for each shipment, the shipments will be delayed for Commission action unless shipped under the established rates which are higher than negotiated rates.

"General Edmond C. R. Lasher of the United States Army, who was Assistant Chief of Transportation, testified at the trial:

> 'for us to make these arrangements at the Washington level with the various states, let us say 48 states, with 48 varieties of methods to follow, we would find ourselves in an administrative

> morass out of which we would never fight our way, we would never win the war.'"

355 U.S. 534, 545, 546.

See also the discussion as to the significance of the military character of the carriage in the dissenting opinion, pages 550 and 551.

Since the shipment of household goods by the United States does not present the unique and difficult problems encountered when military supplies are involved, it appears that the case before us has more in common with Penn Dairies than with California Commission v. United States. This being so, we must conclude that Penn Dairies controls our determination of the issue here.

We do not overlook the fact that our conclusion is at odds with that taken by the Supreme Court of Florida [fol. 99] in United States v. Carter, et al, supra, the only litigated case actually deciding the precise issue involved here and with the practice followed by a number of state regulatory commissions which have interpreted the California decision as barring state interference with the negotiation of rates for the shipment of household goods by the United States. Since, however, the Supreme Court, in the California case, did not overrule Penn Dairies but was at pains to distinguish it, there remains the necessity for us to determine which of these cases governs the issue here presented. We have, therefore, examined the cases carefully, and have decided that Georgia's attempt to regulate the rates at which the United States may ship household goods of its military and civilian personnel presents the same issue as was presented by Pennsylvania's attempt to set the price at which the United States could purchase milk for its military personnel. Assuming that the Penn Dairies case still stands as a precent, as we must, we are compelled to conclude that the Georgia Public Service Commission can legally do what the Georgia statute says it can do. If our assumption of the continuing vitality of Penn Dairies is incorrect it must remain for the Supreme Court to say so.

It follows that judgment is entered for the defendants on their motion for summary judgment.

This 2nd day of October, 1961.

/s/ Elbert P. Tuttle
United States Circuit Judge

/s/ Frank A. Hooper
United States District Judge

/s/ Boyd Sloan
United States District Judge

FILED October 2, 1961

[fol. 100] [File endorsement omitted]

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NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—filed November 30, 1961

I. Notice is hereby given that the plaintiff, United States of America, hereby appeals to the Supreme Court of the United States from the judgment entered in this action on October 2, 1961 granting defendant's motion for summary judgment.

This appeal is taken pursuant to 28 U.S.C. 1253 and 2101(b).

II. The clerk will please prepare a transcript of the record in this case, for transmission to the Clerk of the Supreme Court of the United States and include in such transcript the entire District Court record in this case.

III. The following question is presented by this appeal:

Whether, where the United States is liable for the cost of moving the household goods of its civilian or military personnel or their dependents, the State of Georgia may prohibit special arrangements between the United States and common carriers for the movement of such goods between points within the state at rates below those prescribed by the Georgia Public Service Commission.

/s/ Charles L. Goodson
United States Attorney
Northern District of Georgia

/s/ Irwin A. Seibel
Attorney, Department of Justice
Counsel for Plaintiff

[fol. 101] ACKNOWLEDGMENT OF SERVICE
(omitted in printing)

[fol. 102] Clerk's Certificate to foregoing transcript omitted in printing

[fol. 103] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA

[Title omitted]

Civil Action No. 7528

MOTION FOR EXTENSION OF TIME FOR DOCKETING CASE ON APPEAL TO THE SUPREME COURT OF THE UNITED STATES AND ORDER ALLOWING—filed January 19, 1962

The United States respectfully moves for an extension of time of 30 days, i.e., to February 28, 1962, within which to docket the above case on appeal in the Supreme Court of the United States. This Court entered judgment in the above case on October 2, 1961. The United States, on November 30, 1961, filed a notice of appeal from said judgment to the Supreme Court. The time for docketing the instant case, unless extended, will expire on January 29, 1962.

Various governmental agencies are involved in this litigation and an extension of time is necessary in order for the United States to coordinate their respective positions and prepare and print a jurisdictional statement. Appellee, Georgia Public Service Commission, has authorized us to state that it agrees to the requested extension.

It is therefore requested that this Court enter an order granting an extension of time of 30 days, until February 28, 1962, for the docketing of the above captioned case in the Supreme Court of the United States.

/s/ Richard A. Solomon, Chief
Appellate Section
Antitrust Division

/s/ George R. Kucik
Attorney
Department of Justice

[File endorsement omitted]

[fol. 104] ORDER

Upon motion of the United States in the above captioned case it is hereby ordered that the time for docketing this case on appeal in the Supreme Court of the United States shall be extended for a period of 30 days, until February 28, 1962.

/s/ Elbert P. Tuttle
United States Circuit Judge

Dated: January , 1962

[fol. 105] CERTIFICATE OF SERVICE
(omitted in printing)

[fol. 106] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA

[Title omitted]

Civil Action No. 7528

MOTION FOR EXTENSION OF TIME FOR DOCKETING CASE ON APPEAL TO THE SUPREME COURT OF THE UNITED STATES AND ORDER ALLOWING—February 23, 1962

The United States respectfully moves for a further extension of time of 15 days, i.e., to March 15, 1962, within which to docket the above case on appeal in the Supreme Court of the United States. This Court entered

judgment in the above case on October 2, 1961. The United States, on November 30, 1962, filed a notice of appeal from said judgment to the Supreme Court. By an order entered in this Court on January 19, 1962, the time for docketing the case on appeal was extended to February 28, 1962, and unless extended further, will expire on that date.

To effectively present this case to the Supreme Court, counsel for the United States must coordinate the positions of the various governmental agencies involved. However, because the United States is now pressed by other pending business in the Supreme Court, the additional time requested is necessary in order to achieve this coordination and prepare and print a jurisdictional statement. The Georgia Public Service Commission, appellee, has authorized us to state that it consents to the requested extension.

[fol. 107] It is therefore requested that this Court enter an order granting an extension of time of 15 days, until March 15, 1962, for the docketing of the above captioned case in the Supreme Court of the United States.

RICHARD A. SOLOMON, Chief
Appellate Section
Antitrust Division
GEORGE R. KUCIK
Attorney
Department of Justice

CERTIFICATE OF SERVICE
(omitted in printing)

[fol. 108] ORDER—February 23, 1962

Upon motion of the United States in the above captioned case it is hereby ordered that the time for docketing this case on appeal in the Supreme Court of the United States shall be extended for a period of 15 days, until March 15, 1962.

United States District Judge

Dated: February 23, 1962

[fol. 109]

SUPREME COURT OF THE UNITED STATES

No. 794, October Term, 1961

UNITED STATES, APPELLANT

vs.

GEORGIA PUBLIC SERVICE COMMISSION

APPEAL from the United States District Court for the Northern District of Georgia.

ORDER POSTPONING JURISDICTION—May 21, 1962

The statement of jurisdiction in this case having been submitted and considered by the Court, further consideration of the question of jurisdiction is postponed until a hearing of the case on the merits. Counsel are requested to brief and argue, in addition to the merits, the question of this Court's jurisdiction on direct appeal under 28 U.S.C. § 1253; see 28 U.S.C. § 2281; cf. Kesler v. Department of Public Safety, 369 U.S. 153, 155-158. The case is set for argument immediately following No. 239.

Mr. Justice Frankfurter took no part in the consideration or decision of this case.

☆ U. S. GOVERNMENT PRINTING OFFICE 1962 643917 1449